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IDEAS ON LIBERTY


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PERSPECTIVE

# Score One for Tribalism

Throughout its brief history, the idea of individualism has animated much good that has come about in society. It has also generated volumes of nasty criticism. Among the critics Marx was perhaps the most fervent. He claimed there is nothing more to the belief in the value of the individual human being than a ploy to get people to produce with all their energy. Once this vigorous production bore fruit, the idea of the value of the individual could be abandoned for the myth it was and the real truth could be told: "The human essence is the true collectivity of man." Marx thought we are what he called "specie beings," that is, parts of humanity, with humanity the locus of true value. It is only by service to humanity that our worth is established, he argued.

The tribal mentality—always a major factor in how human beings acted—is still a powerful force today. In America communitarians advocate a tribal humanitarianism rather than socialism which is becoming useless as an inspiring ideal because of its very bad reputation. Individualism continues to be assaulted from both the right and the left. Conservatives see it as too readily opposing tradition and custom, the vote of the historical majority. Modern liberals just find humanity much more lovable than actual individual human beings.

In the process of denouncing individualism, critics have perpetuated all sorts of distortions. Most notable is the one where individualism is represented as claiming that every human being is supposed to be an isolated, totally unique, self-sufficient, or atomistic individual. As if the position held that we each come into the world ready made, unrelated to others, free to abandon our fellows and flourish, nevertheless. Such abstract individualism has been the target of innumerable critics. On this mythical view has been blamed crime, poverty, child molestation, divorce, decadence, hedonism, violence, hate, racism, greed, and what have you. Every scourge of the world is laid

at the feet of individualism by these critics who are usually inspired by Marx, even when they only use this portion of his thinking (realizing that the rest has been shown to be a mistake).

Two can play at this game of smearing views by isolated, misconceived example. Indeed, it is arguable that what troubles tribalism is far worse than any of the pitfalls of individualism.

This all was brought home to me when I heard about the vicious killing of Colombian soccer star Andrés Escobar, who had the misfortune of accidentally scoring into his own team's goal in the World Cup game against the team from the United States. Three thugs gunned him down as he emerged from a club in Bógota, with one gunman shouting "Goal, goal" as the shots were fired, or so it was reported.

If the team is all, if the group is supreme, if the country or race or sex or ethnic collective is placed above everything else, well then, perhaps, when someone bungles big in a crucial game, even if only accidentally, off with his head. He needs to be liquidated, the team purified, not unlike the ethnic purification going on elsewhere on the globe where folks think that the group reigns supreme over the individual.

Who ever heard of individual rights in such a situation? It is nonsense, is it not, just as the greatest collectivist thinkers through the ages have claimed. One of these, Auguste Comte, the father of sociology and the thinker who coined the term "altruism," made the point this way:

> [The] social point of view . . . cannot tolerate the notion of rights, for such notion rests on individualism. We are born under a load of obligations of every kind, to our predecessors, to our successors, to our contemporaries. After our birth these obligations increase or accumulate, for it is some time before we can return any service. . . . This ["to live for others"], the definitive formula of human morality, gives a direct sanction exclusively to our instincts of benevolence, the common source of happiness and duty. [Man must serve] Humanity, whose we are entirely.

Not that people who elevate the group above the individual all advocate treating individuals with no regard for their well-being, with no attention to their rights. But for them individual rights are subsidiary to the group's purposes. So if the group is all worked up about winning soccer games, why should they not treat any individual badly who does not follow suit? Why spare that person?

This may not be the fairest point to raise against those who advocate communitarianism, socialism, or other forms of groupism or collectivism. But these thinkers are far from fair when it comes to characterizing individualism and what may be expected from a society where individualist values are well respected. Fair or not, my criticism is not off the mark. The Colombian hoods were not alien to the tribal way of political and social thinking when they eliminated Mr. Escobar. Their social point of view could not tolerate the idea of individual rights either.

—TIBOR R. MACHAN

*Dr. Machan teaches philosophy at Auburn University, Alabama.*

## Freedom

The degree of freedom possessed by those having the least power and influence is the true measure of freedom in a nation.

The powerful, having a false sense of freedom through the exercise of power over others, can too easily and inadvertently give up a free nation's foundation of freedom and thus almost unknowingly give up their own basis of power.

—JOHN V. WESTBERG

THE FREEMAN
IDEAS ON LIBERTY

# Ludwig von Mises (1881–1973): A Prophet Without Honor in His Own Land

by Bettina Bien Greaves

*An understanding of the principles of human action makes it possible to distinguish "good" government policy from "bad," to recognize government programs that will foster peace and prosperity and to spot the flaws in those that will be destructive. Reasoning on the basis of sound principles, Ludwig von Mises was able to anticipate the direction, if not the timing or extent, of the changes a specific government action would bring about.*

* * *

The year was 1921. It was near midnight. Economist Ludwig von Mises was guiding some visitors through Vienna's dimly lit inner city. The city was asleep. All was quiet except for the sound of the men's muted conversation and the clop of their footsteps on the cobblestone streets. The men had just come from an economic conference where they had been discussing the disastrous effects of inflation. Prices were rising rapidly in most of the countries of post-World War I Europe. Germany and Austria, especially, were facing hyperinflation. In Austria, the economy was in the doldrums. Large numbers of industrial firms were idle throughout the land, while others were working only part-time.

As the men approached the center of the city, the still of the night was broken by "the heavy drone of the Austro-Hungarian Bank's printing presses." Their Viennese host, Mises, explained that those presses "were running incessantly day and night, to produce new banknotes." Throughout the land only the printing presses stamping out banknotes were operating at full speed. "Let us hope," Mises told his guests, "that industry in Germany and Austria will once more regain its pre-war volume and that war- and inflation-related industries, devoted specifically to the printing of notes, will give way to more useful activities."

Mises had been concerned about inflation even as a young man. After receiving his doctorate in 1906, he wrote a number of serious studies on money and banking. Former Austrian Minister of Finance Ernst von Plener, a leading economist, called Mises to his office one day to discuss one of his papers. "I don't know why a young man like you is interested in inflation," Plener said. "True, inflation was a serious problem in the past. But," he went on, "all the

*Mrs. Greaves, Resident Scholar at The Foundation for Economic Education, attended Professor Mises' seminar at New York University for many years and knew both him and Mrs. Mises well. The remarks attributed to Professor Mises in direct quotation marks are based on his own writings, interviews, and notes taken at his seminar and lectures.*

civilized countries in the world are now on the gold standard. Can you imagine England, France, or Germany, going off the gold standard?"

Ludwig, then only 26 years old of medium height, serious, prim and proper, with a military bearing, was respectful. But he begged to differ. "I see a movement in those countries," Mises said, "that can't be called anything but 'inflationist.' The books of their economists express enthusiasm for inflation, even for unlimited inflation. Sooner or later, the ideas of those inflationist economists will influence public opinion. And that must lead to inflationist government policies." (Mises' anticipation was borne out during World War I when England, France, and Germany all went off the gold standard.)

Mises served in the Austro-Hungarian cavalry on the eastern (Russian) front in World War I. When he returned to Vienna, he found that inflation had compounded the destitution of the people. Men and women who had worked and saved for decades discovered that the value of their pensions was evaporating; the savings of a lifetime could pay for only a few streetcar rides. Merchants could not replace inventories with the receipts from their sales. A shoe dealer, for instance, with an inventory of 10,000 pairs of shoes in 1914, saw his assets dwindle each year as the cost of shoes went up with the inflation, until finally his receipts from a year's sales could pay for only one pair of shoelaces.

An Austrian emigre, who went to the United States before 1900 and became wealthy, bequeathed his fortune to establish an educational institution for orphans in Austria. Under Austrian law the dollars had to be invested in Austrian government bonds until arrangements for the institution could be made. World War I intervened. By the end of the war inflation had made the government bonds worthless and nothing was left for the orphans.

Economist Mises realized that inflation hurt some people at the expense of others. Those who were industrious, conscientious, and responsible, who worked hard and saved, were "losers," as the inflation eroded their savings. Those who borrowed to live beyond their means and spent lavishly were "winners" as they were able to repay their creditors with worthless paper money.

In 1922 Ignaz Seipel became Chancellor of Austria. Dr. Seipel, a Roman Catholic priest, honest and conscientious but naive about finance, was not the usual politician. Mises, by then a government adviser, and Wilhelm Rosenberg, a lawyer friend who was an expert in financial questions, convinced Seipel that for the good of the people the printing of superfluous banknotes should be stopped. Then Mises realized Seipel expected that halting the inflation would bring prosperity right away. Mises didn't want to deceive Seipel. "Stopping the inflation will bring economic improvement in time," Mises told Seipel. "But not immediately. . . . Its first effect will be to cause a 'stabilization crisis,' that will bring about serious, though short-run, economic hardship." Mises went on to explain why: "The people have come to expect ever-rising prices. They have adjusted to the inflation so far as they were able. Halting the flow of banknotes will come as a shock. Those who have anticipated further inflation will find their plans frustrated. Thus, the *immediate* effect of stopping the inflation will not be to benefit you and your political party. I don't say you will have serious difficulties. . . ."

Seipel interrupted. "But you say this is necessary, that this is the moral thing to do. If so, it doesn't matter. The party must do not only what is popular in the short run; it must also do what is best for the country." Thanks to Seipel the Austrian inflation was then brought to a halt in Austria in the fall of 1922, one year before Germany's catastrophic post-World War I inflation came to an end. And, in spite of the opposition of socialist opponents, Monsignor Seipel and his party won their next (October 1923) election.

## Mises' Attack on Communism

Mises' first serious attack on Communism, or socialism as it was often called, was

in a 1920 article. Then two years later, Mises shocked his contemporaries with a book, *Socialism*, in which he explained that if the Communists wanted to do away with private property, they would be unable to calculate and thus unable to plan production. In a Communist society, he said, in which all property was communally owned, the planners would have to rely on soldiers and hangmen to enforce their edicts.

Without private property, there would be no private owners bidding for goods and services, no exchanges among real owners. Without private owners, each of whom was being guided by the desire for profits and a fear of losses, there would be no market prices to indicate what people wanted and how much they were willing to pay for what they wanted. Without market prices, there would be no competition and no profit and loss system. And without a profit and loss system, there would be no network of interrelated consumer-directed, independent producers. Without private property, competition, market prices, and a profit-and-loss system, the planners would not know what to produce, how much to produce, or how to produce it.

Except as the planners could observe and copy production going on in non-socialist lands, they would find themselves "floundering in the ocean of possible and conceivable economic combinations without the compass of economic calculation." Thus a Communist society would be rife with economic waste, malinvestment, production bottlenecks, surpluses of some things, shortages of others. Certainly it would be no utopia.

When *Socialism* appeared in 1922, pro-socialist post-World War I Europe was not ready to accept his rigorous critique of Communism and all varieties of socialism. The book was criticized severely, not only by socialist polemicists but also by learned professors. For decades apologists for Communism energetically defended the U.S.S.R. and its economic system, arguing that the nation, supposedly a Communist society, obviously existed. Moreover, it was functioning. In 1957, the Swedish sociologist (and future Nobel laureate) Gunnar Myrdal, ridiculed Mises, saying that the very type of economic planning Mises had said was "impossible," was actually being carried out in almost all underdeveloped countries and "often with the competent guidance of economists."

For decades the U.S.S.R.'s society stumbled along, its edicts enforced, as Mises had predicted, by soldiers and hangmen, and often with the assistance of massive subsidies from abroad. For 72 years from the Revolution of 1917, its people endured economic shortages and bottlenecks, tolerated shoddy merchandise, and suffered deprivation. For 72 years the Soviets struggled to copy foreign production processes and foreign prices. Then finally the *coup de grace*. In 1989, the Communist regimes of Eastern Europe and the U.S.S.R. collapsed. Widespread economic waste and continuing malinvestment throughout those 72 years in the U.S.S.R. and its satellite nations were their undoing, eloquent testimony to the truth of Mises' 1920 thesis. In spite of the thousands of words devoted to trying to refute Mises, the U.S.S.R.'s central planners had really *not* been able to calculate after all. Mises had been right.

When in 1989 Mises' 98-year-old widow learned that the Berlin Wall had been knocked down and the Communist regimes of Eastern Europe and the U.S.S.R. had been toppled, she wished her husband had lived to see that day. "But," she said, "he had known that one day Communism would come tumbling down."

## The Rise of Nazism

Mises was a Jew in a society that was becoming increasingly anti-Semitic. As an economist who understood the principles of human action he saw the handwriting on the wall as early as 1927. He realized that the interventionist policies that several European governments were following would bring disaster to the Continent and its inhabitants. Mises foresaw the end of freedom in Central Europe. But the world didn't listen to his warnings.

Adolf Hitler had been a failure in his native Austria. He had fought with the Germans during World War I and had then stayed on in Germany. Not long after the War, Hitler gained control of the German Workers' Party and transformed it into the anti-Semitic National Socialist German Workers' Party. By the 1930s, Hitler's movement was gaining adherents in large numbers in Germany.

At a garden tea party in September 1932, during a meeting in Bad Kissingen, Germany, of the Society for Social Policy (Verein fuer Sozialpolitik) Mises suddenly asked: "Do you realize that we are gathered together for the last time? Hitler's rise to power will put an end to such meetings as this." At first the members of Mises' audience were aghast at his remark. Then they laughed! Mises continued: "Hitler will be in office in twelve months." The others present thought that unlikely. "But even so," they asked, "even if Hitler *does* come to power, why shouldn't the Society meet again?" Hitler, Mises said, wouldn't tolerate gatherings of intellectuals who might someday become his opponents.

Hitler came to power in Germany in March 1933, about six months after the Society's September meeting. And as Mises had anticipated, the Society did *not* meet again until after the end of World War II.

Mises served for many years in the Austrian government's chamber of commerce as economic adviser to the national parliament. He was a part-time, unsalaried lecturer at the University of Vienna, receiving as pay only the fees of students. In 1927 he established the Austrian Institute for Business Cycle Research. By dint of his prodigious output—books, articles, and lectures—Mises acquired a reputation in Europe as a serious scholar and earned some international recognition.

Mises also conducted in Vienna a private seminar for young Ph.D.'s who were interested in economics. Mises and his seminar students did serious work, but they also joked, dined together, and sang lighthearted songs about economics composed by one of their number, Felix Kaufmann.

Standing at the window of his office one day, Mises mused aloud to one of his young economist friends, Fritz Machlup. "Maybe our civilization will end, maybe grass will grow on the Ringstrasse," referring to Vienna's wide street which had been built on the site of the medieval fortifications that circled the inner city. "Maybe we will all have to leave Austria. But where shall we go and what can we do? For what jobs are we qualified?" Mises speculated that he and his friends might wind up in a Latin American country and he considered the kind of work each might do. "You, Fritz," he said, "being friendly and sociable, might become a dancer in a night club, giving young ladies and old a good time." Mises suggested various roles his other friends might fill in that night club, as actors, singers, waiters, hostesses, and bartenders. When Mises considered his own talents, he said, "Unfortunately, I am no good as a dancer or singer, and I don't think I would be a good waiter. I will have to be the doorman standing in a uniform in front of the place."

Mises' Viennese friends heeded his warning and were able to leave Austria before the Anschluss in 1938, when Hitler's forces marched into Vienna. Most came to the United States and in time found positions, not as waiters and bartenders, but as professors at prestigious colleges and universities.

## An Economist in Exile

Mises himself, foreseeing the threat of Hitler's totalitarian regime, left Vienna in 1934 to take a position at the Graduate Institute for International Studies in Geneva, Switzerland, although still retaining his old apartment in Vienna and his professional ties with the Institute for Business Cycle Research and with the Chamber of Commerce.

Ludwig, a very private person, seldom talked about his personal affairs. His friends and colleagues in Vienna considered him a confirmed bachelor. Yet in the 1930s he was quietly courting a glamorous former actress, Grete (or Margit) Herzfeld Sereny. Margit

*Ludwig von Mises,*
*circa 1925*

Sereny, a widow, was struggling to raise two young children alone. Mises visited Vienna in February 1938 to make arrangements for their marriage. When Hitler's forces invaded Austria that March, confusion reigned. Margit in Vienna managed to telegraph Ludwig, by then back in Geneva, "no need to come." She and her daughter, Gitta (Margit's son was already out of the country, studying in England), finally succeeded in obtaining the necessary papers and railroad tickets, left Austria and traveled to Switzerland, where Margit and Ludwig were quietly married. Mises' apartment in Vienna was ransacked, his books and other property destroyed by Austrian Nazis soon after March 1938, when Hitler took over Austria.

Professor and Mrs. Mises spent their first few years together in Switzerland, enjoying the intellectual life of Geneva. However, when the Germans conquered France and entered Paris, they decided it was time to leave Switzerland and go to the United States. They fled by bus with other refugees across southern France. It was a harrowing trip. The driver was frequently forced to change his route to avoid running into German soldiers. Turned back at the small town of Cerberes on the Spanish border because their visas were no longer valid, Mises was able, by taking a 4 A.M. train for Toulouse, to get new visas. The next day the bus with its passengers crossed into Spain. The refugees then took a train to Barcelona, a plane to Lisbon, and from there finally, after a 13-day wait, a ship to the States.

The Mises arrived in New York in August 1940. At 59, he had to start over in a new land, writing, lecturing, and teaching to a new audience in a new language. During his years in the United States, he taught at New York University Graduate School of Business Administration and wrote many important books. Although his books were often criticized severely when they appeared, his analyses of market operations, money, inflation, government intervention, and Communism, all firmly based on human action principles, live on and are gaining increasingly serious attention from scholars. Mises may very well prove to be, as one admirer described him, "the greatest economist of the century—the next century." □

THE FREEMAN
IDEAS ON LIBERTY

# Invasion of the Mind Snatchers

by Nelson Hultberg

*The collectivists have not abandoned their ultimate goal—to subordinate the individual to the State.*

—Barry Goldwater

It has been said that there is a conspiracy in America among powerful elitist bankers to manipulate the political levers of the nation and move our system into a form of government that resembles Communism. For years this has been a common theme among many conservatives. While I doubt such a "Communist conspiracy theory" is a realistic way to view politics, it is fair to say that there is a "collectivist ideological movement" working in America today—a concentrated desire on the part of many people to drastically change America's concept of limited government.

A political movement, possessed of the size and sophistication that modern *collectivism* enjoys (whether in the form of socialism, fascism, or welfarism) could not possibly be sustained purely by a lust for power or duplicity among a nation's political-economic elite. History does not move on so narrow an axis. The human drama is a vast mosaic of personalities, ambitions, ideals, revolutionary technologies, motivational and practical blunders—all intertwined with and driven by ideology.

No group of powerful men has the capacity to move a country toward despotism at will. Political shifts that nations make are only part of the larger cultural direction that their civilization is making. And the cultural direction of a civilization is largely determined by ideological forces that are laid down in the people's minds by the most prestigious thinkers of the preceding centuries.

As Ludwig von Mises told us decades ago:

> The history of mankind is the history of ideas. For it is ideas, theories and doctrines that guide human action, determine the ultimate ends men aim at, and the choice of the means employed for the attainment of these ends. The sensational events which stir the emotions and catch the interest of superficial observers are merely the *consummation of ideological changes*. There are no such things as abrupt sweeping transformations of human affairs. What is called, in rather misleading terms, a "turning point in history" is the coming on the scene of forces which were already for a long time at work behind the scene. New ideologies, which had already long since superseded the old ones, throw off their last veil and even the dullest people become aware of the changes which they did not notice before.[1]

The "collectivist ideological movement," operating in America today, exists on a number of levels. Its roots go deep into the human psyche. For example, the collectivist mindset is most prevalent in the academic, media, and entertainment fields, where anti-capitalist ideas can be instilled into unsuspecting minds, prompting them to desire a regimented society, or as Aldous Huxley put it, a "Brave New World," populated by slaves who do not have to be coerced because they love their servitude.[2]

## An Alien Force

A popular and frightening science-fiction movie from the 1950s, called *Invasion of the Body Snatchers*, gives us an appropriate

*Mr. Hultberg is a free-lance writer in San Antonio, Texas.*

metaphor for what is taking place in our country. Today's collectivists are like the aliens in the movie. They are everywhere, and they are not after just our bodies, but the enslavement of our minds. Conceptual sophistries and moral inversions are the mysterious pods that these ideological aliens leave in their wake. They are aliens because they wish to destroy our system of free enterprise and limited government. And even though they believe what they are doing is right, they are not exactly innocent, for they have chosen to ignore the horrendous ramifications of their actions.

They have chosen to ignore the consequences of collectivism by suppressing and disregarding the vast body of literature that explains those consequences and shows how past thinkers have falsified history. They have chosen to promote a government-regimented world in which an all-powerful state dominates. They have chosen to propagandize for a society in which individuals are not allowed to make their own choices, not allowed to spend their earnings as they wish, and not allowed to educate their children as they see fit. This is a slave society, and those who would make excuses for such a society are either of dictatorial or servile inclination. They either want to rule, or to be ruled. But in either case, they are not men and women of the American mold.

## An Ideological Shift

The cause of America's shift to collectivism this past century is not political, but *ideological*. False ideas in philosophy, economics, and history have seeped into our culture to reshape our world view, our ethical sense, and our economic understanding.

Ironically it is becoming fashionable in certain intellectual circles these days to de-emphasize this power of ideas in the determination of our culture. It is not just conspiratorialists who feel there are other forces more potent in the unfolding of our history. We are told by numerous conventional pundits that technology, pragmatics, diseases, emotional needs, the structure of elites, classes, and ethnic identities are equal—if not more significant factors—in the ultimate construction of social reality.

The anti-ideological argument contends that because of liberalism's continued entrenchment, abstract principles should be pushed aside strategically in favor of more populist factors. But what such a view fails to consider is that philosophical ideas must first be formulated correctly, and the timing of their entrance on history's stage must be right. Men are indeed "rationally absorbing" creatures and will respond to the timeless abstracts, but those abstracts must be clearly formulated in light of modern outlooks, and the mass of citizens must be ready for them.

A rudimentary study of history shows us that until the social order is ready for a set of ideas, they will lie dormant and will be rejected when presented, despite the clarity of their truth. Such ideas, if not openly suppressed, will be ignored until the influential citizenry has retreated from all the blind exits and has fully tasted the sourness of life in the absence of those ideas. America has not yet sampled sufficiently the misery of life in the absence of the timeless truths.

## The Importance of Ideas

Of course, ideas are not the sole factors responsible for the construction of an era's cultural and political institutions, but they are far and away the most important factors.

It would be wise to keep Huxley's admonition on this issue always in mind: "It is in the light of our beliefs about the ultimate nature of reality that we formulate our conceptions of right and wrong; and it is in the light of our conceptions of right and wrong that we frame our conduct, not only in the relations of private life, but also in the sphere of politics and economics. So far from being irrelevant, our metaphysical beliefs are the *final determining factor* in all our actions." [emphasis added]

Mises' premise, then, still stands: "Ideas, theories and doctrines" are the prime determinants of a culture's direction.

Ideological falsehoods, spawned in nineteenth-century Europe, have infiltrated the

collective consciousness of America over the past century to profoundly alter our moral visions of what life is, and what it should be.

Such ideological falsehoods have brought about ethical and psychological turmoil in the minds of people everywhere, a turmoil that has created three powerful forces that have manifested themselves in the collectivist movement. These three forces are *moral guilt*, *envy*, and *greed*.

Moral guilt was formally introduced into the ranks of the intellectual elite (as Ayn Rand has shown) by Auguste Comte's philosophy of altruism, which extols *sacrifice of the individual to the collective* as man's highest moral purpose. Envy and greed are just two of the psychological vices of humans, lurking always beneath the surface of their natures to be inflamed by the right mixture of irrational ideas.

## Altruism

Auguste Comte (1798–1857) was a French philosopher and founding father of sociology, which he believed would become the "Queen of all Sciences." He advocated substituting the worship of Humanity for God, and preached that man's highest moral duty was to sacrifice his desires for Humanity's good. He coined the term *altruism* for his moral vision. This vision has dominated generation after generation of intellectuals, inculcating in them extreme distaste for any policies that advocate the primacy of the individual, and creating in them moral guilt for their possession of individual wealth, power, and status. If one wishes to grasp the reason for the extreme enmity that collectivist liberals exhibit toward America and capitalism today, here lies one of its strongest roots. Altruism dominates the collectivist mind.

The collectivist ideological movement that prevails today thus draws its strength to a great degree from two dominant personality types of the twentieth century: those overcome by profound feelings of *moral guilt* because of their superior talent, brains, energy, and resultant social status, and those overcome by profound feelings of *envy* and *greed* in the unfolding realities of life.

The *guilt-driven* group is comprised of academics, writers, artists, publishers, politicians, media personalities, movie stars and directors, foundation heads, old money heirs (like the Kennedys, Rockefellers, and Fords), and a great many successful first-generation businessmen.

The *envy-greed driven* group is comprised of increasing numbers of indolent men and women throughout the middle and lower classes—what earlier generations referred to as "sluggards" or "idlers"—those able-bodied citizens who resent the fact that in a free society they must endure years of hard, productive work to achieve security and elevated social status.

There are, of course, many men and women in both the middle and lower classes of society who are noble, hard-working, highly motivated citizens—the "strivers" of the world, who accept the moral law that one gets out of life what he puts into it. "Strivers" are possessed of strong characters and properly *suppress* inherent envy and greed, while "idlers" are possessed of weaker characters, and eagerly *indulge* their envy and greed, allowing such emotions to form their political policy.

The collectivist ideological movement works in this way: Large numbers of highly talented humans, driven by intense guilt over the status and wealth their talent has gained them, have tacitly formed a powerful faction with those who are weak-minded and easily susceptible to envy and greed.

The number of idlers in America used to be fairly small. Throughout the early part of our history, envy and greed were shameful emotions to indulge. Young people were taught the moral law that a man gets out of life what he puts into it. Thus they became "strivers" as they grew into adults. But since the turn of the century, the number of young people growing into "idlers" has been rapidly expanding due to socialist justifications in the schools, moral confusion in the churches, and material bribes in the political arena.

As a result, strivers are now in the minority in America, and because our country has shifted during the twentieth century into much more of a pure democracy where the largest gang of voters gets to dictate its desires to the rest of the populace—the collectivist vision has become especially virulent. Sluggards, due to their numerical strength at the polls, now have the ability to vote themselves endless entitlements and favors from the pockets of the strivers.

The *guilt-driven* thus form a tacit union with the *envy-greed driven* to extirpate their respective personal demons. Liberal elites and the non-producers join together to milk the nation's productive men and women.

This is the real evil that is destroying America—the union of liberal elites and the masses to politically collectivize our economy. Its primary causes are the malevolent *envy* and *greed* that human beings are so susceptible to, and which are being propagandistically inflamed by the talent-laden establishment because of its own feelings of *moral guilt*—feelings which have evolved out of philosophical misconceptions, such as altruism, handed down in our universities over the past 100 years.

Anyone who doubts this analysis need only ask himself: Why are those on the political left not content with merely correcting the flaws of the original American vision? Why are they not satisfied with merely assuring equal rights for all minorities and all women? Why do they also advocate massive redistribution of individual wealth and the regimentation of our economy through stifling bureaucracies? If they were really champions of freedom, prosperity, and justice, then should they not fight for equal rights and free enterprise, rather than the forced collectivization of society into a centralized welfare state?

The historical evidence is abundantly clear by now. Capitalism works! It produces phenomenal wealth and allows men and women to be free to live as they please. As any objective study of history and economics shows, all the problems attributed to capitalism (inflation, depressions, monopolies, shortages, corruption) are not caused by the free market, but by government intervention into the marketplace.

Why would anyone of genuine intellect and integrity wish to eradicate such a free and prosperous society? The only conclusion is that despite their vehement fight for the liberation of blacks and women from the "shackles of the nineteenth century," advocates of the liberal welfare state are, at heart, loathers of freedom. All the values that sustain civilized life (freedom, strength of will, independence, honor) are now endlessly denigrated with sophistries designed to make us socially accept sloth, servility, and weakness. The world of sanity and rationality gives way to the regimental nightmares of Orwellian "newspeak" and "political correctness."

History is tossed down the memory hole by our "intellectuals" whose perspectives extend no further than the previous decade. Oliver Wendell Holmes' "one-story intellects"—the fact-mongers, memorizers, statisticians, and calculators—wheel and deal from the corridors of power and TV talk shows, spewing out prescriptions for government confiscations of our earnings and absurd partnerships to merge government bureaucracies, incapable of creativity with highly innovative private companies.

Communism fell to the only fate its nature could have produced—brutal starvation and political chaos. Yet our intellectual class still claims *they* can get the socialist utopia right the next time. We now can have freedom without risk, plenty without work, and hope without heartache.

Such are the illusions of modernity's *short-range* mentalities. Such is the fate of those who believe knowledge is numbers and truth a remnant of primitive times, that technology is a substitute for values and security more precious than liberty. But these tyrannical pretensions did not just accidentally come about. Mises' "consummation of ideological changes" is upon us. □

1. Ludwig von Mises, *Socialism: An Economic and Sociological Analysis* (London: Jonathan Cape, 1951), pp. 566–67.
2. Aldous Huxley, *Brave New World* (New York: Bantam Books, 1967), p. xii.
3. Aldous Huxley, *Ends and Means: An Inquiry into the Nature of Ideals* (New York: Harper & Brothers, 1937), p. 11.

THE FREEMAN
IDEAS ON LIBERTY

# Tacit Consent: A Quiet Tyranny

by Bowen H. Greenwood

To the student of liberty, John Locke has always been an important philosopher. His doctrine of rights, especially property rights, has always struck the imagination. On the other hand, John Rawls is thought of by many who value freedom as a dangerous philosopher. His concern with fairness often seems to override the claims of freedom. Yet, one concept which is expressed in Locke's famous *Second Treatise of Government* opens a door in Locke's thinking which brings him dangerously close to Rawls. This is the doctrine of tacit consent.

Locke argues that a government can only be legitimate when its citizens have consented to it. In response to the obvious claim that not everyone has consented to the government under which they live, Locke offers the idea of tacit consent. He claims that if anyone accepts the benefits of a government, he has tacitly consented to the burdens that government imposes on him. In this essay, I will argue that the essence of this argument is that one cannot justly claim benefits without incurring an obligation. Thus, accepting the benefits of society imposes a certain duty on one.

Rawls, on the other hand, argues that a government would be legitimate only if its citizens consent to its fundamental principles from behind a veil of ignorance. Only principles of justice chosen without knowledge of one's own circumstances can be tenable. When one emerges from the veil of ignorance, though, consent becomes a different issue. In fact, without the veil, consent no longer matters. Merely by living in a society organized on principles chosen behind the veil of ignorance, one incurs a duty to that society.

Locke begins his argument by claiming that all men are naturally free. In his state of nature, men are free to "Order their actions, and dispose of their possessions, and persons as they think fit, without asking leave, or depending on the Will of any other Man."[1]

Yet, in a government, some people obviously come to have power over others. How? Locke claims that the state gains those powers when the citizens give them to the society. "[H]e authorizes the Society, or which is all one, the Legislative thereof to make laws for him as the publick good of the society shall require."[2] The state governs by consent. Only when a citizen authorizes it to govern his life does the government have that power.

Of course, many people live under a government who have never authorized it to make decisions for them. So how can a state legitimately have that power? Locke's answer is the doctrine of tacit consent. When a person receives the benefits of a society, Locke contends that he is accepting the obligations that society imposes. Locke writes, "[E]very man, that hath any Possession, or Enjoyment, of any part of the Dominions of any Government, doth thereby give his tacit Consent, and is as far forth obliged to Obedience to the laws of

*Mr. Greenwood is a journalist in Billings, Montana.*

that government, during such enjoyment, as any one under it."[3] Thus, if one receives benefits, one incurs obligations.

## The Lockean Argument

Locke's argument for this claim is vague, but seems to have two parts. The first is that, if a person came to acquire property in accordance with Locke's theory of just acquisition (by mixing his labor with it), when that man entered civil society by consent, and agreed to be under its laws, it would be irrational for him to leave his property out of the society, and not subject to the laws.[4] After all, the property is his because part of himself—his labor—is invested in it, therefore his joining the society would imply that the property came with him. Then, when the original owner of the property dies and wills the property to his son, that son lives on and enjoys the same land which has already been put under the jurisdiction of the state. So, by living there and not leaving, he grants his tacit consent to the state's claim to make laws for him. Since the state has already been given the right to make laws on that land, by living on the land the son gives the state the right to make laws for him.

There seems to be something more to Locke's argument, though. He appears to claim that it is simply irrational to receive benefits without expecting to have an obligation in return. If someone gives me something, I am said to owe a debt, in at least some sense. The tacit consent theory argues that the thing given is the protection of the state, and the debt owed in return is obedience to the laws.

## Rawls' Theory of Consent

This argument is very similar to that of Rawls. In *A Theory of Justice*, Rawls describes his theory of consent. Where Locke is interested in whether men actually would consent to a government, whether explicitly or tacitly, Rawls asks whether or not men *would* consent to this form of government from a fair original position. Rawls then claims, similarly to Locke, that if a state is just (is chosen in a way Rawls considers just), then anyone who lives under it, and receives its benefits, is obligated to obey its laws.

Rawls defines a fair perspective from which to choose principles of justice, and calls it the original position. In this perspective, men are behind a veil of ignorance, where they are ignorant of their place in society, class position or social status, natural assets or abilities, intelligence, strength, etc.[5] This state Rawls calls the original position, and claims that it corresponds to the state of nature in more traditional contractarian theory.

Rawls claims that whatever principles men choose in this position are just, because this is a fair place from which to choose principles. As he puts it, "no one is advantaged or disadvantaged in the choice of principles . . . no one is able to design principles to favor his particular condition." The original position is fair, according to Rawls, because no one is able to take advantage of a superior condition and choose principles which he knows will benefit him. Therefore, he claims of the original position, "the fundamental agreements reached in it are fair."[6] This demonstrates Rawls' fundamental sense of the importance of fairness in consent theory.

It is significant to note that Rawls is not at all interested in consent expressed outside of the original position. Once principles of justice have been chosen in the original position, men have no right to opt out of them from outside that position. As Rawls says, "Each is bound to these institutions independent of his voluntary acts, performative or otherwise. Thus even though the principles of natural duty are derived from a contractarian point of view, they do not presuppose an act of consent, express or tacit, or indeed any voluntary act, in order to apply."[7] If a society is structured in accordance with just principles, one has no choice but to obey the laws of that society.

Thus, Rawls' ideas about consent are apparently different from those of Locke, but on closer inspection there are similari-

ties. For, although he claimed above that his principles of justice presupposed no act of consent, Rawls nonetheless accepts the Lockean idea of tacit consent, and argues in favor of it. He writes that one is bound to a society if the society is just, and

> one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one's interests. The main idea is that when a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to similar acquiescence on the part of those who have benefited from their submission.[8]

Thus, like Locke above, Rawls believes that voluntarily accepting benefits incurs an obligation. It is fair to say that this belief stems from the importance Rawls places on fairness in a political system. What he seems to be saying above is, in effect, "it wouldn't be fair for you to benefit from my actions, and not assume a duty as a result."

In two important ways, Rawls has lessened the importance of actual, explicit consent. To begin with, it is not even important to him whether a person consents actually to a measure. It is only important that one would consent in the original position. Furthermore, though, he also claims that simply receiving benefits voluntarily implies consent as well, and allows the state to make demands on one regardless of whether one consents in fact.

## Striking Similarities

Although Locke would reject the claim that a person's actual explicit consent does not matter, he would agree with the claim that receiving benefits voluntarily gives the state the right to make laws for one. The similarities between his theory of tacit consent and Rawls' are striking; so much so that one is tempted to suspect Rawls was guided entirely by Locke in formulating his. The question, though, is whether or not Locke could reject the first of Rawls' claims—that if one would consent to x in the original position, it does not matter whether one consents to x in reality—without also rejecting the concept of tacit consent. I argue that underlying the theory of tacit consent is a belief in the importance of fairness, or justice, as Rawls would say. When Locke claims that tacit consent obliges one to obey laws, he is really making the claim that it wouldn't be fair to take from the state without giving to the state. Thus, he would have to agree with Rawls' claim that a fair institution must be obeyed regardless of whether one consents to it or not.

Defenders of Locke might protest this, claiming that Locke gave a logical defense of his theory of tacit consent, and does not need to rely simply upon the idea of fairness. This, of course, is the above-mentioned claim that property, once brought into a state, remains under the state's control, regardless of the wishes of future owners. Let us examine this claim more closely, for it will appear weaker under light.

The man who originally acquired the land, according to Locke's theory of property, had the right to do whatever he wanted with it, except to let it go to waste. Yet, the son who inherited it, who is alleged to give his tacit consent to the activities of the state, acquired the property in another manner. He was given it as a gift. So, the question becomes, does this form of ownership confer the same rights as acquiring it originally?

## Nozick's Views

Some light can be shed on this question by turning to the philosopher Robert Nozick. According to him, the son's ownership does in fact confer the same rights as the father's. In his book *Anarchy, State and Utopia*, he claims that a person is entitled to a holding (has just ownership of it) if he either acquires it justly or has it justly transferred to him.[9] Both methods of gaining entitlement to a property carry the same rights. Locke would most likely accept this argument. In the state of nature, people are entitled to do almost anything to which all parties in-

volved in the act consent. There is no reason to assume that this list of permissible contractual actions would not include transferring ownership of property. Thus, when the father gave the property to his son, the son became owner of the property in the same sense his father was.

Yet Locke's defenders might ask whether the son's ownership of the property gives him the right to remove it from the state's control. Although the father acquired property which was without previous obligation, the son is acquiring property which is already under the control of the state. Thus, the son cannot acquire the right to take the property out of the state's control.

However, it is not correct to assert that the father acquired land which was without obligation, whereas the son acquired land which was already under control of the state. According to the Lockean theory of property, original acquisition of property transfers that land from a communally owned state to a privately owned state. The father's land was, in fact, under obligation before he acquired it, just as it was under obligation when the son acquired it. Thus, it would seem that the same arguments Locke uses to justify the father being able to acquire complete ownership of the land would also apply to the son.

Furthermore, if the son does not have the right to take the property out of the state's control, how can he truly be said to own it? As Nozick points out, "the central core of the notion of a property right in X . . . is the right to determine what shall be done with X."[10] Therefore, if the son is to be said to own the land, then he must have the right to decide what to do with the land. This must, by definition, include taking it out from the state's control. If it did not, then the state would retain the right to decide how the land is used, not the son, and therefore he would lack the fundamental right of ownership.

Thus, Locke's argument that tacit consent springs from living on land which is already under state control is invalid. If the father truly gave the land to the son, then in order to have the right to make laws for that land the state would have to get the same consent from the son as it did from the father. In fact, there is no other ground on which the theory of tacit consent can rest than that of simple fairness.

Having accepted the idea of fairness as a justification for imposing obligations, is Locke forced into accepting the Rawlsian position that a society grounded on fair principles does not require the consent of those who participate in it? At this point, we have seen that Rawls claims that (1) if you accept benefits you incur obligations because that's fair, and (2) a fair society does not require consent. Locke, on the other hand, after analysis of the tacit consent argument, appears to claim that (1) if you accept benefits you incur obligations because that's fair, (2) any society requires consent, and (3) accepting benefits and thereby incurring obligations is an acceptable demonstration of consent.

## Obligation?

However, Locke's argument breaks down into a claim that by accepting benefits from a society one obligates oneself to that society. The investigation must now focus on whether it is possible for Locke to draw a distinction between this claim and that of Rawls that one is obligated to any fair society, consent or no.

A first attempt to answer this question comes from pointing out the fact that fairness is the obligating factor in both situations. Thus, Locke's claim about tacit consent can be reworded as "The fact that it would be unfair to take benefits without incurring obligations means one is obligated if one takes benefits." Similarly, Rawls' claim, that a fair society obligates one, can be reworded as "The fact that the society is fair obligates you." This places the two claims logically very near to each other.

Yet, they are still definitely not the same claim. Locke's claim has an "if" involved, which Rawls' claim lacks. That is, no matter how much he believes in fairness, Locke still places an obligation on one only after one commits a voluntary action. He does not say that you must always do what is fair,

only that in this case, it would be unfair of you not to do x, so you must do it. Rawls, on the other hand, claims that one must always do what is fair. So at this point, Locke still appears able to avoid the Rawlsian trap of fairness obviating consent.

Yet, Locke's reasoning must again be called into question. How can it be just for fairness to obligate in this one circumstance, but not in another? Perhaps Locke is claiming that by voluntarily playing an active part in any equation, one activates fairness as a binding force. That is, as long as one just sits around, the fact that a particular action is fair does not require one to perform that action. However, once one receives certain benefits, the fact that a certain action is fair does require one to perform that action.

## Passive Benefits

The problem with this claim is that receiving benefits is passive, not active. You can just sit there, without taking any action, and the state can give you certain benefits without any action on your part. The North American Air Defense Command (NORAD), for example, defends me from assault without my needing, asking, or even taking notice. Locke's doctrine of tacit consent would mandate that I assume an obligation to the state because of this.

Since Locke's doctrine of tacit consent does not actually require any active participation from one, we can see how fairness can quickly become obligating in all circumstances rather than just in one. Any person giving one a benefit would seem to incur a corresponding obligation from one. Just as I am obligated by fairness to pay taxes for NORAD because it defends me, I could be made to pay someone who washed my windshield on the street, whether I consented to it or not. After all, it would be unfair for me to benefit from his action without giving him something in return.

What one sees here is that the factor which makes fairness obligatory in Locke's tacit consent theory has nothing to do with the one being obligated, and everything to do with external factors. A person who washes another's windshield, or defends him has the power to make a demand on him by virtue of fairness. This situation can easily be expanded to make fairness universally obligatory. One benefits from clean air, so one could be said, under this same Lockean theory of tacit consent, to be obligated to protect the environment.

In short, it is impossible for Locke to defend a claim that fairness obligates only in the case where he wishes to use it, and nowhere else. The way he has conceived of fairness as obligatory allows it to be used in almost any case. Thus, Locke cannot, in fact, avoid Rawls' claim, that fairness is universally obligatory.

Locke and Rawls both make the claim that one who benefits from society is obligated to it. That is, both share a theory of tacit consent. But Rawls at first appears to be making a larger, and completely different claim. However, a closer examination reveals that Locke's tacit consent cannot be defended except on the basis of fairness. Locke's acceptance of fairness on this ground forces him into a situation where he must choose between keeping his theory of tacit consent, and accepting the Rawlsian claim that consent does not really matter as long as the society is fair; or abandoning the idea of tacit consent, and retaining a contractarian framework where individual consent to society matters. In the end, the doctrine of tacit consent cannot be supported while placing any value at all on actual consent. □

1. John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1992), p. 269.
2. Locke, p. 325.
3. Locke, p. 348.
4. Locke, p. 348.
5. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Belknap Press, 1971), p. 12.
6. *Ibid.*
7. Rawls, p. 115.
8. Rawls, p. 112.
9. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 151.
10. Nozick, p. 171.

# How Important Is Your Vote?

The November 1994 election campaign has thankfully come and gone and once again we had to listen to a familiar whine: "Isn't it simply awful that so few people vote. What we need are laws that make it easier to vote or laws that penalize people if they don't."

Don't get me wrong. I cherish the right to vote—so much so that I don't want it belittled by those who think that just showing up at the polls is all it takes to assure the survival of representative government. There are some people who should vote, and then there are others—millions of them, unfortunately—who would do representative government a big favor if they didn't.

Imbedded in the popular complaint about the decline of voting among the American electorate is at least one assumption that is demonstrably false: that higher voter turnout is needed to somehow "make democracy work."

In the first place, "democracy" is perhaps the most oversold political concept, drummed uncritically into our heads at an early age as the moral high ground of governance. Some measure of public participation in whatever government we have is certainly preferable to dictatorship but not because it carries with it any assurance of *good* or *limited* government. It does not guarantee a *free* society. An electorate can *democratically* vote itself into bankruptcy and slavery. Americans, in fact, have been doing that for most of this century.

What people commonly think of as "democracy" is preferable to dictatorship because it permits changes in government policy without the need to shoot, hang, or guillotine anybody. Those changes, however, will be in whatever direction public opinion is blowing at the moment—good or bad, smart or stupid, helpful or destructive.

Besides, America is not a pure democracy anyway—and was never intended to be. There are some things our Founders wisely felt should not be subject to majority vote such as individual rights to life, liberty, and property.

In the first half-century of America's experience as a nation, voter turnout was often much lower than it is today—frequently less than 20 percent of adult males actually cast ballots. Part of this is explained by the presence of property requirements for voting in many states. Most of our Founders and early leaders believed that people ought to have a direct and personal stake in the system before they could vote on who should run it. The fact that in those years we managed with low voter turnout to elect the likes of Washington, Jefferson, Madison, and Adams suggests that maybe we should make voting more *difficult*, not easier—a privilege to be *earned*, not an unbridled right to be abused.

Then there are those who want to make it so easy to vote that you wonder how any-

*Dr. Reed, economist and author, is President of The Mackinac Center for Public Policy, a free market research and educational organization headquartered in Midland, Michigan.*

thing so costless could be the least bit meaningful. Three years ago, I read a blurb about a Colorado organization called "Vote by Phone." I don't know if the group is still around, but the idea still is—allowing Americans to cast their votes on election day by telephone from home instead of at local polling stations.

Under the plan, all registered voters would be given 14-digit voter identification numbers. Voters would call a toll-free number from touch-tone phones, punch in their ID numbers, and vote on candidates and ballot issues by punching other numbers.

Whether or not the science exists to resolve the inherent technical, security, and privacy questions, there exists no reason at all to make voting any easier than it currently is. Low voter turnout does not endanger our political system. Here's what does: politicians who lie, steal, or create rapacious bureaucracies, voters who don't know what they are doing, and people who think that either freedom or representative government will be preserved by pulling levers or punching ballot cards or making phone calls.

The right to vote, frankly, is too important to be cheapened and wasted by anyone who does not understand the issues and the candidates. The uninformed would be doing their duty for representative government if they either became informed, or left the decisions at the ballot box up to those who are. How did the idea that voting for the sake of voting is a virtue ever get started anyhow?

Our political system—resting as it does on the foundations of individual liberty and a republican form of government—is also endangered by people who vote for a *living* instead of working for one. H. L. Mencken had them in mind when be described an election as "an advance auction of stolen goods." They use the political process to get something at everyone else's expense, voting for the candidates who promise them subsidies, handouts, and special privileges. This is actually anti-social behavior that erodes both our freedoms and our representative form of government by conferring ever more power and resources upon the politically well-connected and the governing elite. I don't know about you, but I don't want these people to have it so easy that all they have to do is pick up a phone to pick my pocket.

Surely, the right to vote is precious and vital enough to be worth the effort of a trip to the polling place. Anyone who won't do that much for good government isn't qualified to play the game.

Moreover, politicians who bemoan ever lower voter turnout shouldn't be so critical of non-voters. If a non-voter's excuse is that he doesn't know what he should to vote intelligently, he should be thanked for avoiding decisions he's unprepared to make and encouraged to educate himself. If a non-voter is simply disgusted with lies and broken promises, or just doesn't want to choose between Scarface and Machine Gun Kelly, then maybe it's the *politicians* who should listen and learn; the non-voters are trying to tell them something.

Sure, it would be nice if more people voted—but only if they know what they're doing and if they're not doing it to grab something that doesn't belong to them. There's nothing about voting by telephone or other such schemes that makes people smarter or more honest, and there's nothing about stuffing the ballot box with more paper that assures either freedom or representative government. □

THE FREEMAN
IDEAS ON LIBERTY

# Private Property Ownership

by Albert R. Bellerue

According to the Fifth Amendment to the U.S. Constitution, no person shall be "deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation." This clause, known as the eminent domain reservation, gives the state the legal right to take private property for public use without the consent of the owner. But, the owner has a right to his day in court to insure "just compensation."

The Fourteenth Amendment states that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." This simply extends legal property protection from all of the amendments in the Bill of Rights down to local government protection of private property ownership.

But just what is private property ownership? *Property* is anything subject to ownership and *private* relates basically to an individual. Ownership relates to a possessory interest in a property. This is the right to exert control over the uses of property to the exclusion of others.

## The Bundle of Rights

In real estate, the ownership-rights theory is compared to a bundle of sticks wherein each stick represents a separate right-to-use. For example, a property owner can sell his mineral rights usage to one person and lease his surface rights to another. Likewise, an aerial or scenic easement can be granted wherein the underlying rights of use may be retained. But, each time a use is granted away, the bundle of rights shrinks.

Government power further reduces the number of sticks in the bundle of rights through taxation, escheat, eminent domain, and police power.

In matters of *taxation*, the federal government is precluded from direct taxation of real property. This right of taxation is reserved to state and local governments. But local encroachment also removes a number of sticks from the ownership bundle.

*Escheat* deals with the state taking over ownership of property if the property owner dies without a will.

As previously explained, *eminent domain* limitations set out in the Fifth and Fourteenth Amendments at the very least prohibit government expropriation without payment for the taking.

*Police power* relates to government regulation of property in accordance with that ambiguous term "general welfare." Examples of major government intrusions into the right to private property ownership are planning and zoning ordinances; building codes; air and land traffic regulations; and health, safety, and sanitary regulations. Some of these make sense; others are downright damaging to the right to life, liberty, and property ownership.

It is in this latter group of police powers assumed by political government that private property ownership rights are being

*Mr. Bellerue is a real property analyst specializing in eminent domain.*

ignored. More and more sticks have been expropriated from the bundle by regulation or negation of proprietary uses. Such damaging political action often reduces the owner's property value without just compensation. The proper term for that is "extortion."

If there is any question about the act of protecting and maintaining rights rather than property per se, a statement by U.S. Supreme Court Justice George Sutherland should provide clarification: "It is not the right of property which is protected, but the right to property. Property, per se, has no rights; but the individual, the man, has three great rights, equally sacred from arbitrary interference: the right to his life, the right to his liberty, the right to his property. . . . The three rights are so bound together as to be essentially one right. To give a man his life but deny him his liberty is to take from him all that makes his life worth living. To give him liberty but to take from him the property which is the fruit and badge of his liberty, is to still leave him a slave."

## Legal Plunder— The Law Perverted

Morality, or proprietary relations between people, cannot exist without a basic understanding of the birthrights of everyone to life, liberty, and property. Basically, human rights are nothing more than property rights.

Currently, throughout the world, nation after nation is in chaos because of trespass upon human property rights.

The United States is no exception. Increasingly, our people are at odds with political governments because of disregard for these rights. Yet, recognition of participation in these trespasses should first be placed at the doorstep of the people who unconscionably take part in this legal plunder.

The City of Mesa, Arizona, recently refused to grant a permit for a residential subdivision located two miles distant from Williams Airport. The basic reason given was that noise from the aircraft would annoy future residents. An aerial easement which would have offset future liability was never suggested.

No mention was made of the fact that the hundreds of existing Capehart Homes on the old Air Force base remain occupied. The emphasis was placed upon the City Planning and Zoning projections calling for industrial usage to surround Mesa's newly-to-be-acquired airport.

No exceptions were to be made in spite of the fact that there is no present demand for industrial usage in the surrounding agricultural area. Nor is there any assurance that the federal property will be transferred soon because of Indian claims to some of the property. It may be years before industrial demand surfaces.

The original sticks existing in this owner's bundle of rights that gave him a prior right to use his property for residential subdivision have been taken from him by city police power with no just compensation.

The only legal use remaining to him now is industrial, the likely market demand for which he may never see in his lifetime. Through police power of local government regulation, this octogenarian's retirement nest egg has been legally plundered.

No longer do local governments use eminent domain's Fifth Amendment where they must compensate the owner for partial loss in property value. Instead, they fall back upon police power through planning and zoning regulation. This permits them to take property without compensation: legal plunder! The bundle of ownership rights to private property keeps shrinking.

Frederic Bastiat (1801–1850), a French economist-statesman, brilliantly and presciently described this encroachment by government: "The law perverted! And the police powers of the state perverted along with it! The law, I say, not only turned from its proper purpose but made to follow an entirely contrary purpose! The law became the weapon of every kind of greed! Instead of checking crime, the law itself guilty of the evils it is supposed to punish!"

City and county planners and zoners in

Arizona have become tyrannical in their unconstitutional takings because judicial decisions have favored local government trespasses upon private property ownership for nearly half a century.

Local officials continue to manipulate the legal use of real property for maximum political benefit to themselves, at the expense of the owners of private property.

## Supreme Court Takes Favorable Stand

Hopefully, the tide may be changing. After many years of wishy-wash, the U.S. Supreme Court has finally come out with a ruling in favor of private property rights. On June 14, 1994, the importance of individual property ownership was revived in a decision in *Dolan vs. City of Tigard, Oregon.*

The court ruled in favor of the petitioner, Florence Dolan, saying that land-use regulations cannot be based upon the political theory that desirable ends justify any means to restrict the freedom of the property owner. Mrs. Dolan had proposed replacement of her 9,700 square-foot plumbing-supply store with a much larger commercial building on her 1.67 acre lot. But in order to obtain a permit the city of Tigard required her to donate 10 percent of her property to the city for the City Drainage Plan in order "that it be preserved as greenways to minimize flood damage."

While the Oregon courts had ruled against Mrs. Dolan, in favor of the local government taking, the U.S. Supreme Court reversed these rulings. Chief Justice William Rehnquist wrote: "We see no reason why the takings clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation." His reference related to the questionable practice of local governments using planning and zoning regulation to take private property without "just compensation."

The decision also stated that the local government did not show a "rough proportionality" between the effects of the proposed development and the proposed government uncompensated taking. Henceforth the burden of proof will fall directly upon the local government rather than the property owner.

There is much more in Rehnquist's *Writ of Certiorari* than just items relating to abuses by the City of Tigard. Many of the supporting cases bring to mind comparable land-use regulation abuses throughout Arizona.

Richard A. Epstein was the lawyer who won the Dolan decision. In his book *Takings*, which explores private property and the power of eminent domain, he states: "The sole function of police power is to protect individual liberty and private property against all manifestations of force and fraud."

Since government land use regulation is police power and since many Arizona planning and zoning enforcements smack of force and fraud, who is to protect individual liberty? Most property owners can't afford to fight city hall and city and county attorneys are more interested in politics.

Perhaps this question provides the answer to why the Phoenix *Gazette* took an editorial position in support of Proposition 300, the state regulatory takings bill wherein the office of the Arizona Attorney General would review a "taking's impact analysis" of all proposed takings. (The proposition was defeated in the November 8 election.)

This sounds like a good proposal, provided that the Attorney General's Office also reviews questionable local planning and zoning regulations that might be in violation of the Fifth Amendment.

Since the concept of private property ownership provides the basis for morality, maybe *Dolan vs. City of Tigard* will help us recover some of the sticks in the bundle of rights that we keep losing. It may, in the long run, help to reduce crime—both legal and illegal varieties. □

THE FREEMAN
IDEAS ON LIBERTY

# Private Property and Government Under the Constitution

by Gary M. Pecquet

The economic concept of private property refers to the rights owners have to the exclusive use and disposal of a physical object. Property is not a table, a chair, or an acre of land. It is the bundle of rights which the owner is entitled to employ those objects. The alternative (collectivist) view is that private property consists merely of a legal deed to an object with the use and disposal of the object subject to the whims and mercies of the state. Under this latter view, the state retains ownership and may at any time regulate or even repossess the property it temporarily cedes to individuals.

The Founding Fathers upheld the economic view of property. They believed that private property ownership, as defined under common law, pre-existed government. The state and federal governments were the mere contractual agents of the people, not sovereign lords over them. All rights, not specifically delegated to the government, remained with the people—including the common-law provisions of private property. Consequently, the constitutional rights regarding free speech, freedom of religion, the right of assembly, and private property rights are all claims that individuals may hold and exercise against the government itself. In brief, private property refers to the rights of owners to use their possessions which are enforceable against all nonowners—even the government.

*Dr. Pecquet has a Ph.D. in economics from Virginia Polytechnic Institute, has published numerous articles on economic history, and recently passed the CPA accounting exam.*

## The Economic Concept of Ownership

"We may speak of a person owning land and using it as a factor of production," writes Nobel laureate Ronald Coase in his essay on "The Problem of Social Cost," "but what the owner in fact possesses is the right to perform certain (physical) actions." These "rights to perform physical actions," called private property, constitute the real factors of production and the real articles of trade. Legal title itself means nothing. At best, a title or deed amounts to proof of ownership, not the rights inherent in ownership.

Many people confuse the economic concept of ownership with the mere holding of legal title. Often, title and ownership coincide, but not necessarily. Sometimes businesses lease equipment from manufacturers under circumstances which transfer all of the meaningful rights of ownership to the lessee while title remains with the manufac-

turer. Here are two examples: if a lease approximates the useful life of the equipment or if the lease itself contains an option to buy the equipment outright for a nominal sum. In both cases the lease transfers ownership in the true economic meaning of rights to employ the equipment without actually changing title. Proper accounting principles, in such cases, require the lessee to record the equipment on its books as an asset and the lease itself becomes a method of financing the purchase. The manufacturer although still retaining title to the equipment no longer "owns" the property and, accordingly, should not include it as an asset.

In other cases, the "bundle of rights" to use an object may be separated and sold apart from the title. Once again, here are two examples: landowners may lease property for a specified period of time while retaining the residual rights to the land upon termination of the contract or the same landowner may sell only the mineral rights, while retaining title along with most of the "sticks" in the property rights bundle. The validity of these contracts implies that ownership refers to the many legitimate uses and disposal of things, rather than title to the object itself.

The economic view of property consisting of primarily actions, rather than things, is also compatible with intellectual property, such as copyrights and patents. The right to publish a book or construct a machine may be reserved to the author/inventor. These species of private property do not refer to any specific objects at all, but are legitimate articles of property nonetheless.

## The Common Law Boundaries of Private Property

The British common law has established the legal limits to property rights through case precedents, reflecting the practical needs of trade long before the North American colonies even existed. The common law provided a clear picture of ownership to the Founding Fathers.

The common law has three pillars: private property, tort liability, and the law of contract. Property and tort liability are inexorably intertwined. No one has a right to infringe upon the legitimate rights of others. If one uses his possessions to create a health hazard or nuisance to others, he is fully liable for damages. In some instances, an injunction may even prevent an unlawful action before it causes damages to others. The very boundaries of private property are defined by common law liabilities. For example, if Mr. A erects a six-foot fence at the border of his land and this fence blocks the sunlight to Ms. B's garden, does Ms. B have a common law right to access the sunlight? If so, she would have a claim under tort law. If not, Mr. A may construct the fence and Ms. B either relocates her garden or persuades or compensates Mr. A to move his fence away from the established boundary. The point is that a reasonable and efficient result should occur under either rule. What is important is for the liability limits to property be well-established and clearly defined. After many case precedents the common law courts begin to sharply define the boundaries of private property. Owners may then negotiate, mutually reaching an arrangement, without going to battle in court over a legal ambiguity or seeking a new statute.

The "bundle of rights" we call private property comprise the subject matter for all contracts. Every time goods exchange hands, land is purchased, and an employment contract is signed, "bundles of rights" to resources are exchanged. All commerce, and the prosperity which it generates, depend upon the security and certainty of property rights. If an urban area has a notorious high crime rate, local businesses will tend either to relocate or increase prices. If the courts do not establish consistent liability rules, then litigation costs increase and the basis for agreements is undercut. If the legislature threatens to regulate business, then potential competitors may be frightened away. If the potential uses to which property may be employed are subject to regulation by a governmental body, then the value of property declines. Men like James Madison and Alexander Hamilton understood that prosperity de-

pends upon the security and certainty of property rights and designed the Constitution accordingly.

The common law does evolve slowly to reflect changes in both technology and social mores, but it provides a stable set of rules of conduct. Moreover the common people on juries decide common law cases, not kings, not legislatures. This establishes an important rule-making authority outside of any centralized government.

## The English Whigs on Property and Government

Our American forefathers did not develop their political theories in an intellectual vacuum. More than a century before the American Revolution, a Civil War raged in Britain. It pitted the Monarchy against Parliament. Among the opponents of the Monarchy were the seventeenth-century English Whigs. Over the course of a few decades, English Whig intellectuals expounded their theories about property and government. These thinkers, including John Locke, Algernon Sidney, and Thomas Gordon, taught America's founders much about property and government.[1]

Prior to the rise of the English Whigs, the "divine right of kings" had held that all rights, liberties, and properties actually belonged to the king. The king merely permitted his subjects to use their possessions. The king, however, might regulate the use or even seize these possessions outright at his whim. The people had no claims or rights which could be exercised against the sovereign. Their possessions were at the mercy of the government.

By contrast, the English Whigs believed that the fountainhead for all rights was the sanctity of the individual, not the divinity of the state. John Locke contended that human rights were "natural rights" which preexisted government. The original owners of the land were the real sovereigns, not the king. Remember the old English saying, "A man's house is his castle and every man is king." Owners, however, might consent to give up a small part of their liberty and property to government in order to institute criminal law and national defense and to perform certain other specifically delegated tasks. Legitimate government is formed by contract and may never acquire more rights than delegated by the property owners who institute it. The authorities must never exceed their narrow constitutionally delegated authority—lest they become despotic.

According to the Whig view, legitimate government is an agent, a servant, a mere convenience charged with certain specific tasks. Moreover, even elected governments tend to become despotic as the British Parliamentary experience illustrated. Most of the descriptions of political power during colonial times were negative. Thomas Gordon discussed the issues of the day in *Cato's Letters*. Power was often shown as a "clutching grasping hand" or described as a "cancer that eats away at the body public."

It is also relevant that the Whigs expressed all rights in terms of property. Each man owned his own person and labor. Slaveholders were condemned as man-stealers, the lowest sort of thief who stole the whole person, not merely part of his labor. Whenever the Whigs argued for freedom of religion, the teachers of our forefathers referred to "property in one's conscience." When they opposed Sabbatarian laws, prohibiting certain activities on Sunday, they referred to "property in one's time." The Whig view equated property and liberty, once again reflecting the economic concept that property refers primarily to freedoms to act.

## The Founders and Framers on Property and Government

The best way to examine the importance of private property to our forefathers and its place under the law is to study the words of the founders and framers themselves: men like Thomas Jefferson, James Madison, and Alexander Hamilton. In the passage below Jefferson argues that the colonial landholdings had always been held free and clear of the British crown. Throughout American colonial experience, the British crown ex-

acted a small fee called a quit-rent upon all landholders. The quit-rent often went uncollected and never raised much revenue, but it remained on the books as a legal assertion that all land titles were held subject to the crown. In 1774, Jefferson disputed this kingly claim. Jefferson's reasoning gave historical teeth to the Whig view that sovereignty belongs to individuals and that property pre-exists government. Therefore the United States government formed two years later would be established by free men, not serfs. Neither could the new government claim to be the recipient of any superior monarchial rights or claims to private landholdings. According to Jefferson:

> That we shall at this time also take notice of an error in the nature of our landholdings, which crept in at a very early period of our settlement. The introduction of the feudal tenures into the kingdom of England, though ancient, is well enough understood to set this matter in its proper light. In the earlier ages of the Saxon settlement feudal holdings were certainly altogether unknown, and very few, if any, had been introduced at the time of the Norman conquest. Our Saxon ancestors held their lands, as they did their personal property, in absolute dominion, disencumbered with any superior. . . . William the Conqueror first introduced That system [feudalism] generally. The lands which had belonged to those who fell at the battle of Hastings, and in the subsequent insurrections of his reign, formed a considerable proportion of the lands of the whole kingdom. These he granted out, subject to feudal duties, as did he also those of a great number of his new subjects, who by persuasions or threats were induced to surrender then for that purpose. But still much of the land was left in the hands of his Saxon subjects, held of no superior, and not subject to feudal conditions. . . . A general principle indeed was introduced that "all lands in England were held either mediately or immediately of the crown": but thus was borrowed from those holdings which were truly feudal, and applied to others for the purposes of illustration. Feudal holdings were therefore but exceptions out of the Saxon laws of possession, under which all lands were held in absolute right. These therefore still form the basis of the common law, to prevail whenever the exceptions have not taken place. America was not conquered by William the Norman, nor its lands surrendered to him or any of his successors. Possessions are undoubtedly of the [absolute disencumbered] nature. Our ancestors however, were laborers, not lawyers. The fictitious principle that all lands belong originally to the king, that they were early persuaded to believe real, and accordingly took grants of their own lands from the crown. And while the crown continued to grant for small sums and on reasonable rents, there was no inducement to arrest the error.[2]

In *The Federalist Papers*, James Madison and others argued that the proposed U.S. Constitution would protect the liberty and property of the citizens from usurpations of power from the federal government. Power in the new government was to be divided into three branches: legislative, executive, and judicial. This would create a system of checks and balances necessary to hinder the unwarranted expansion of political power. The division of power would also make it more difficult for a majority to oppress a political minority and political stability would more likely result. In the following passage James Madison discusses the problems of "mutable policy" (governmental activism). Madison believed that the new Constitution would establish a consistent, stable set of laws necessary to promote prosperity. Otherwise, he warned,

> The internal effects of a mutable policy are still more calamitous. It poisons the blessings of liberty itself. It will be of little avail to the people that the laws are made by men of their choice if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised

before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?

Another effect of public instability is the unreasonable advantage it gives to the sagacious, the enterprising, and the monied few over the industrious and uninformed mass of the people. Every new regulation concerning commerce or revenue, or in any manner affecting the value of the different species of property, presents a new harvest to those who watch the change, and can trace its consequences; a harvest, reared not by themselves, but by the toils and cares of the great body of their fellow citizens. This is a state of things in which it may be said with some truth that the laws are made for the few, not the many.

In another point of view, great injury results from an unstable government. The want of confidence in the public councils damps every useful undertaking, the success and profit of which may depend upon a continuance of existing arrangements. What prudent merchant will hazard his fortunes in any new branch of commerce when he knows not but that his plans will be rendered unlawful before they can be executed? What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim of inconsistent government? In a word, no great improvement or laudable enterprise can go forward which requires the auspices of a steady stream of national policy.[3]

Alexander Hamilton contended that the new federal Constitution would protect private property and liberty from abuses arising at the state level. Between the end of the Revolutionary War in 1781 and the ratification of the Constitution in 1788 state governments faced debtor uprisings, such as Shays' Rebellion. State legislatures sometimes granted debt relief or "stays" on the payments of debts. Hamilton believed the proposed Constitution had "precautions against the repetition of those practices on the part of the State governments which have undermined the foundations of property and credit."[4] He referred to Article I section 10 of the Constitution which explicitly protects creditors by forbidding states to pass laws "impairing the obligation of contract" or even devaluing debt obligations by making "any thing but gold and silver a tender in payment of debts."

The "impairment of contract" clause remains effective today. New state laws affecting long-standing agreements may only alter future contracts, not existing ones. This protects interstate commerce, such as insurance and banking, from potential abuses by state and local politicians who may be tempted to rewrite contracts to redistribute income from outsiders to local constituents.

In the body of the Constitution, Article I sections 9 and 10, also expressly forbids both federal and state governments to grant titles of nobility. This prohibits the establishment of a formal, hereditary class in the United States. In England, the titles "Prince," "Duke," and "Earl" consisted of much more than a prefix to a name. Nobility also laid feudal claim to the land held by the common people. Feudal titles, such as Prince of Wales and Duke of York, pretend ownership to the entire realm, subordinating the rights of the landholdings of commoners. America's framers hated the European class system and the feudal pretense to the land that it represented. The united states are forbidden to ever establish feudal land tenures to lands because sovereign landholdings are essential to a free "Republican form of government."

The U.S. Constitution contained a number of flaws, most notably, the official sanctioning of slavery. Nor did the Constitutional framers advocate laissez-faire capitalism. Some of the framers, including Alexander Hamilton, believed that the government should actively encourage eco-

nomic growth through protective tariffs. Nonetheless, the framers all held private property in high esteem. Indeed, commercial prosperity seems to be the chief end of good government to them. The economic system under the Constitution is capitalism with a very few specific exceptions explicitly delegating limited powers to Congress, i.e., coin money, establish a Post Office, lay customs duties, etc. James Madison summarized, "The powers delegated to the federal government are few and defined."[5]

## The Bill of Rights on Private Property

Many people were fearful that the Constitution still concentrated too much power in the hands of the federal government. The electorate in key states insisted upon a "Bill of Rights" lest they would reject the proposed Constitution. These amendments soon became incorporated into the new Constitution. Six of these ten amendments pertain either directly or indirectly to private property rights.

The Third Amendment states, "No soldier shall in times of peace be quartered in any house, without consent of the owner, nor in times of war, but in a manner prescribed by law." This amendment grew out of abuses by the British, who had forced people to allow troops into their homes. The amendment clearly protects the rights of homeowners, but is too specific for wider applications.

The Fourth Amendment includes the clause, "The rights of people to be secure in their persons, houses, and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue, but upon probable cause . . ." The "search and seizure" clause has been interpreted to pertain primarily to criminal cases, but the stated intent of this statement is to make people secure in their persons and possessions. In civil cases law enforcement officials presently are able to seize property without a warrant and place the burden of proof upon the owner to show that he did not commit a crime. In fact, some local governments now use civil seizures to supplement their budgets.

The Seventh Amendment requires that for civil cases in federal courts, "no fact tried by a jury, shall be otherwise reexamined in any court of the United States than according to common law." The common law, as we have seen, rests upon three pillars, including private property rights. This indirect recognition of private property only protects individual owners against other private parties. These common law property claims become enforceable against the federal government under the Ninth and Tenth Amendments.

Amendment Nine states, "The enumeration of certain rights, shall not be construed to deny or disparage others retained by the people." Amendment Ten further stipulates, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states are reserved to the states and the people." The original intent of the "enumeration" and the "reservation" clauses clearly reaffirm the contract theory of government held by John Locke and James Madison alike. All "powers not delegated to the federal government" includes any and all private property rights described under the common law. Historically, however, U.S. courts have never used the "reservation" clause to decide important cases.

The most explicit recognition of private property comes in the Fifth Amendment which states "Nor shall [anyone] be deprived of life, liberty, or property without due process of law; Nor shall private property be taken for public use without just compensation." The first clause is called the "due process" clause while the second part is referred to as the "takings" clause.

Until the middle of the twentieth century, the "due process" clause was often used to strike down regulations imposed on private property especially if they amounted to confiscation by regulation or if they exceeded the federal government's constitutionally delegated authority. For example, when President Franklin Roosevelt's Na-

tional Recovery Act required all trades and businesses to form trade associations, restrict entry, and establish minimum wages and prices, the Supreme Court overturned this wholesale reorganization of U.S. industry as a violation of the "due process" clause. This prompted President Roosevelt to threaten to "pack" the Supreme Court. Although Roosevelt failed to gain congressional approval to expand the Supreme Court from nine to fifteen members, the Court no longer overturned New Deal policies. Subsequently, Courts have created an artificial distinction between "property liberties" and "personal liberties." Rarely, do Courts use the "due process" clause to uphold "property liberties" anymore. Current judicial theorists argue that the Constitution does not prescribe a particular economic system (capitalism). Therefore, private property liberties are not protected while "personal liberties" such as First Amendment guarantees of free speech are still upheld under the "due process" clause.

The "takings" clause requires all levels of government to justly compensate owners for property taken for public use. Whenever land is condemned or taken for highway construction, military bases, and so forth, courts must estimate the fair value of the property to be paid to the owners. The "takings" clause also requires governments to compensate owners when confiscatory taxes are imposed or regulatory acts render property worthless.

The "takings" clause was intended to prevent the government from forcing a few property owners to bear the burdens of legislative measures intended to benefit the general public. It reduces the uncertainties of property ownership arising out of the political system, helping to mitigate the problems of "mutable" policy alluded to by Madison. Requiring government to compensate owners for the resources that it takes for public use also enhances proper cost-benefit planning on the part of policymakers; but the primary purpose of this clause is to protect property owners from arbitrary governmental power, not to assist bureaucratic planners—or else the framers would have added a "givings" clause entitling the State to be compensated for the public benefits it claims to generate.

Until the twentieth century, U.S. courts never applied the "takings" clause to regulations falling short of transferring legal title to the government. Courts, however, did respect private property. Owners could find relief under the "due process" clause which could overturn state and federal legislation altogether. Indeed, the failure to apply the "due process" clause in property cases places the "takings" clause as the final barrier to full governmental supremacy over private property rights.

At present, courts are evolving their opinions regarding the "takings" clause. They are willing to allow the regulation of property to some extent, but if the regulation goes too far it may become a taking. The current legal uncertainty results from the clashing views on the nature of private property. Does property constitute the rights of individual owners to actions which enjoy constitutional protections against arbitrary government actions or is the government supreme? In our forefathers' day, the latter view was known as "the divine right of kings." During the middle of the twentieth century, the economic system which allows ownership on paper while the government made all of the important decisions regarding the uses of property was called fascism. Today, in the United States government supremacy over individual property owners means that the government may temporarily permit us to hold title to certain of its possessions and use them in limited ways at its pleasure. So far, the opponents of constitutional property rights have refused to give their system a new name, but it amounts to the same old system called tyranny.

The essence of private property is the bundle of actions which owners may rightfully perform. Logically, any legislation restricting these ownership acts amounts to a regulatory "taking" and the owner ought to be entitled to be compensated for the decline in value of his assets. The Constitution did not establish unlimited majority rule. Even

the legislature must be subject to the rule of law.

Nevertheless, many regulations would not involve compensation under the Fifth Amendment because they either do not involve a regulatory "taking" or measurably reduce the fair market value of property. For example, if landowners have a right to be free of pollution under the common law of nuisance and the owners are too disorganized to protect their rights against polluters, a governmental statute may empower the executive to bring the polluters to court under the common law and even impose special statutory penalties upon them. Since the right to pollute did not exist, no "taking" is involved and the government is merely performing its legitimate role in defense of private property. Other regulations, such as Civil Rights public accommodations cases, the regulatory requirement to serve all patrons would not adversely affect the value of the property. Zoning laws often increase land values. No compensation would be required unless the value of the "takings" is measurably reduced.

Under any interpretation, the "takings" clause is a comparatively weak protection of private property. The government may still impose taxes and acquire resources for public use. Courts must still determine "fair" value by making very imprecise approximations. Finally, some government regulations inhibit trade while actually augmenting the value of certain properties. For example, a zoning ordinance which severely restricts the land available for commercial use might increase the value of the property already employed in trade. Although such laws stifle growth and commercial liberty, the "takings" clause offers no relief to prospective businessmen who are unable to enter the market. The broad interpretation of the "takings" clause is no substitute for the judicial protection of "property liberties" under the "due process" clause.

Following the Civil War, the Thirteenth Amendment ended slavery and the Fourteenth Amendment extended the application of the "Bill of Rights." Section 1 of the Fourteenth Amendment reads, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor deny any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The application of the "due process" clause to the states gives to individuals and businesses the same Fifth Amendment grounds to challenge state regulations as they already possessed against federal law. The "equal protection" clause extends the basic rights of citizenship to all Americans, regardless of race and sex. Both clauses were specifically intended to protect the property and liberty of blacks from outrageous actions on the part of southern states. It obviously outlaws the old southern "separate but equal" segregation laws. Thanks to the Fourteenth Amendment, all citizens are joint heirs to the old Saxon and English Whig concepts of liberty and property.

## Where Have All Our Property Rights Gone?

The constitutional history discussed above clearly shows that the founders did take private property seriously and designed the Constitution accordingly. In order to limit the potential for tyranny the framers: (1) Divided the powers into three separate branches (legislative, executive and judicial). (2) Further separated the functions of government between federal and state levels, giving the federal level only a few enumerated powers. (3) Incorporated a "Bill of Rights" which specifically listed some of the most important applications of individual rights for all people to read and the courts to uphold.

The constitutional protections of our liberties have withered over the years. The division of powers within the federal government may have checked the expansion of one part of the federal government into the

domain of another, but there is no protection for the people and states against collusions and the conspiracies among the different branches to exceed the delegated powers of federal authority. For example, the Constitution does not grant the federal government jurisdiction over education, housing, agriculture, or energy, but these functions have been elevated to cabinet level status in Washington by Congress, administered by the executive branch and approved by the courts.

Federal regulations have become so extensive that Congress often delegates its rule-making powers to numerous, non-elected agencies, such as the FTC, FDA, OSHA, SEC, and EPA. These agencies combine executive and judicial functions with their rule-making authority—subverting the division of power concept becoming laws unto themselves with feudal-like dominions in command over the private property held by commoners. James Madison condemned "the accumulation of all powers legislative, executive, and judicial in the same hands, whether of one, few or many and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny. Were the Constitution chargeable with this accumulation of power or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system."[6]

Most recently, the federal government's appetite for power exceeds its capacity to raise revenues. Instead of taxation and spending, Congress prefers to subvert the rights of private property owners by imposing unfunded mandates upon them, such as "family leave" and employer mandates or forced "contributions" to proposed health-care legislation. The words of Madison decrying the problems of "mutable" policy have been drowned out amidst a flood of ever wider calls for new government powers.

The usurpation of powers and rights belonging to the states and people by the federal government is partly due to defects in the Constitution itself. The framers, unfortunately, never established an effective check or balance that state governments could invoke against the encroachment of federal power into their proper domains. Ever since the Civil War, the threats by states to secede or nullify laws are not taken seriously, no matter how intrusive federal regulations become. Abuses of federal power may only be addressed in federal courts, hardly an independent or adequate restraint on federal authority.

The unfortunate legacy of slavery also made it more difficult to defend both private property and federalism. The framers granted the same constitutional protections to slave-holding as it accorded to legitimate private property. This has led to the mistaken notions among scholars, including noted Civil War historian James McPherson who called the abolishment of slavery in the Thirteenth Amendment as representing one of "the greatest seizures of property in world history." In fact, no one can ever legitimately own another human being. The English Whigs understood that the first right was self-ownership. The emancipation of slaves recognized the legitimate claims by southern blacks to self-ownership. The United Stated did not "seize" the slaves as third world governments take over factories. The Thirteenth Amendment set the captives free.

Following the Civil War, the southern states frequently violated the property rights and liberties of black people. The Fourteenth Amendment gave the federal Congress the power to protect their civil rights. This amendment was necessary, but it also established a precedent, "a hook" which the federal government has used to exceed its legitimate powers. Today, federal usurpation of the domain belonging to the states and people goes unchecked. "Liberal" scholars consider private property rights to be government grants of privilege—to be tolerated when convenient to the government, but no longer as a significant human right in itself. The concept of "states' rights" holds even less respect because it reminds one of past injustices committed by

states, rather than as safeguards against the centralization of power.

The "Bill of Rights" provides very explicit words guaranteeing the rights of the common people. Unfortunately, words are not self-enforcing. The constitutional contract between the people and the government must provide incentives, counterforces, etc. to ensure that politicians remain the servants of the people, rather than the other way around. Even the most ingenious constitutional safeguards will wither and die if the public no longer appreciates the importance of liberty and property and if they can be made to believe that the crises of the day invariably requires extra-constitutional remedies.

Modern intellectuals do not take private property seriously, nor do they wish to constrain the makers of public policy. Ever since the "New Deal" of the 1930s, "liberal" scholars have rejected the belief that any economic system is proper for all periods of history. To them, political economy does not reveal any enduring set of legal principles. Political economy instead molds itself to the crises of the moment. The Great Depression, The War on Poverty, Projected Environmental Disasters, and the Health-Care Crisis, all supposedly require radical reorganization of the economy. Property rights and the rule of law must give way to the reformers.

In truth, no crisis is ever bigger than the Constitution. A solid education in economics would teach that private property and markets normally align the interests of property owners with the public. Most of the attempts by government to eliminate poverty, regulate prices, control macroeconomic fluctuations, or otherwise manage the economy have proven very costly and usually counterproductive. It is also probable that many of the recent ecological scares are scientifically unfounded. Real world problems can usually be addressed within the context of private property and market economics.

Infrequently, a government regulation may provide a convenient route in mitigating a particular problem of the day, but the benefits of infringing property rights are small compared to the sheer costs of government and the uncertainties found in the law today. Moreover the Constitution contains an amendment process to handle situations where the need to act is great and normal remedies appear to be inadequate. This amendment process, however, is a slow, deliberate one which enables the people and the experts alike to investigate, study, and analyze the problem and the costs of alternative remedies. Prudent, reasoned solutions require time.

Neither the Constitution, nor the rule of law can long endure the blight of a misinformed public. As friends of liberty, our eternally vigilant task must be an educational one. The people must ever remember the words of the founders, the wisdom of economists, and the lessons of history. Let us endeavor to turn back the regulatory lords in Washington, the twentieth-century pretenders to our property. □

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2. Thomas Jefferson, "A View on the Rights of British America" (1774) in *The Portable Jefferson*, Merrill D. Peterson (editor), pp. 17–18.
3. James Madison, *The Federalist Papers*, no. 62, pp. 381–82 (New York: 1961).
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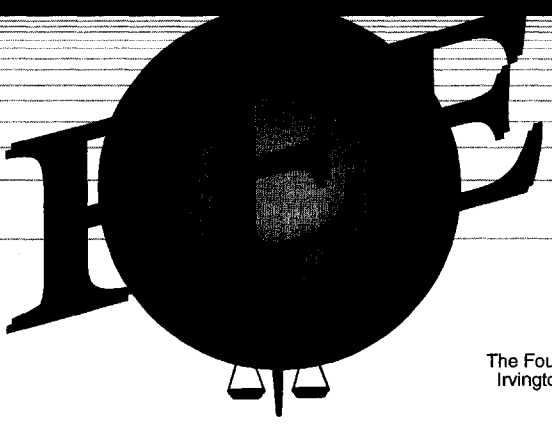
NOTES FROM FEE



The Foundation for Economic Education
Irvington-on-Hudson, New York 10533
Tel. (914) 591-7230
Fax (914) 591-8910

**January 1995**

# Repeal, Repeal, Repeal

Even if the course of the Federal Juggernaut does not change significantly in the coming months, we are pleased to see a change of drivers. The reins of power when held for long periods of time breed inefficiency, arrogance, corruption, and many other vices. To change the drivers is to recondition the monster and make it run more efficiently. But a renovated Juggernaut may be even more predacious than one which bungles and lumbers frequently. Therefore, we are hoping for much more than a new team of eager drivers. They must brake the terrible force, halt it, and dismantle it. They must repeal the laws and regulations which built the Juggernaut.

The American people have entrusted Republicans with control of Congress only twice since 1930, in the elections of 1946 and 1952, and returned it to the Democrats each time after one term. In both cases the Republican Congress did not deviate from the given course by a single degree. On November 8, 1994, the people gave the Republicans one more chance to guide the political process along the lines of a legislative plan called "Contract with America."

The Contract envisions a Constitutional amendment that would mandate a balanced budget. An equality of revenue and expenditure obviously does not signal a change of direction. Given the deficits of hundreds of billions of dollars, it may necessitate expenditure cuts and tax increases. When forced to choose, most politicians prefer to increase the taxes on business, which is rather defenseless at the polls. To reduce expenditures is to revoke entitlements which are legislative promises made to large numbers of constituents. It takes conviction and courage to reduce or even rescind such entitlements—more conviction than most politicians ever had and more courage than they can muster.

Balanced budgets do remove the pressures of deficit financing from capital markets and may lower interest rates. Yet, no matter how virtuous such a balance would be, the call for a Constitutional amendment raises many questions of politics. To wait for a Constitutional amendment is to spend time and energy and much political capital on constitutional reform rather than on the spending predilection itself. If the Republicans have the courage to cut expenditures and balance the budget, they can start right away without a Constitutional amendment—as they used to do so admirably before the dawn of the New Deal and New Republicanism. During the 1920s Presidents Warren Harding and Calvin Coolidge retired one third of the World War I debt.

A Constitutional amendment cannot impart temperance, prudence, and self-reliance on people who prefer self-indulgence, folly, and dependence. Politicians bent on spending would easily circumvent the restraint through backdoor, off-budget spending. They would create agencies that are federally owned or controlled but deleted from the budget. Or they would spend freely through a great number of privately owned enterprises that conduct government programs such as the Federal Home Loan Bank System, the Federal Home Loan Mortgage Association, and the Farm Credit System. No political scheme or device can impose integrity on people who prefer profuseness, dependence, and debt.

It is significant that the Contract promises various tax cuts but carefully avoids any reference to spending cuts. It promises to reduce the capital gains tax and even gives

hope of index adjustments for inflation profits, but remains completely silent about reductions in transfer spending. Republican leaders even reassure their voters that the very pillars of the transfer system—President Roosevelt's Social Security System and President Johnson's Medicare System—are untouchable. These remain off the cutting table, as President Ronald Reagan used to put it.

To freeze federal spending or limit its growth to the rate of inflation does not reverse the path of the Juggernaut; it merely permits it to coast and gather strength for another dash in the future. It raises no questions on either suitability or the morality of a spending program, but rather affirms it with new allocations of funds at the given rate. To freeze federal expenditures on international development and humanitarian assistance at the 1994 budget estimate of $7.325 billion or the 1994 general science and basic research expenditure at $4.445 billion is to reaffirm those programs. Yet foreign handouts visibly impede economic development by financing government enterprises and political largess. The post-World-War II recovery of the European countries, for instance, was inversely proportional to the sums of Marshall aid received. Great Britain, the most favored recipient, experienced a painfully slow recovery; West Germany, the vanquished recipient with the smallest per capita aid, recovered miraculously. In recent years, Chile, with General Pinochet in power, was cut off from all U.S. handouts; unhampered by political largess, its economy grew by leaps and bounds.

Economists always return to the question of suitability: does the program actually achieve what it sets out to achieve? Their answer is universally negative. Political intervention in economic life invariably makes matters worse by disarranging the production process. Political coercion always impairs voluntary cooperation. Yet, it may be rather popular with those individuals who expect to benefit from the coercion. It is dear to the heart of every legislator and regulator who wields the lash of coercion.

The question of morality, which deals with the principles of right and wrong, while often maligned and belittled, does overshadow all political action. It wants to know, for instance, whether the 1995 federal outlays of $11.828 billion for higher education or the $156.135 billion for the Medicare program are right and proper. The architects of these transfer systems obviously argue for the righteousness of such transfers. The critics deplore and condemn their sponsors for engaging in raw political plunder. In their judgment, transfer policies force most Americans who labor without the benefit of higher education to subsidize an educational elite whose working and living conditions by far exceed those of the workers who are forced to support them. It is political evil which brings forth ever more evil.

The Medicare program raises a similar question of political morality. Is it fair and proper for the working population which is struggling to raise a new generation to pay some $156 billion in medical bills for a leisure class of retirees whose personal wealth visibly exceeds that of the working class? Is it moral to seize income and wealth from any individual for the benefit of other individuals?

The Republican Congress must raise these questions if it aspires to dismantle the terrible force. It must unhesitatingly reject all political plunder and dismantle the transfer system with all its entitlements and mandates. It must rid the country of affirmative action policies which alienate and disintegrate, and eliminate all special privileges based on race, gender, disability, and sexual orientation. It must rescind all laws and regulations which strangle business and torment businessmen. In particular, it must repeal the Disabilities Act, the Clean Air Act, and other regulatory acts passed in recent years, and liquidate the FDA, FTC, EEOC, OSHA, EPA, HHS, HUD, BATF, CPB, NEA, and many other regulatory authorities. In short, it must dismantle the task forces of the federal Juggernaut.

Human history must be understood as a theater of diverse groups of individuals guided by incompatible ideals and values and pointing in opposite directions. Our theater is managed by the forces of political power and legislative and regulatory command; the forces of individual freedom and private enterprise have barely been audible in the din of command politics. The November 8th election has given them another opportunity to be heard in the coming session of Congress. History will judge them not by the speeches they will give and the number of new laws they will pile on the mountain built by their predecessors, but by the number of laws they will repeal. To be discernible in American history they must repeal, repeal, repeal.

Hans F. Sennholz

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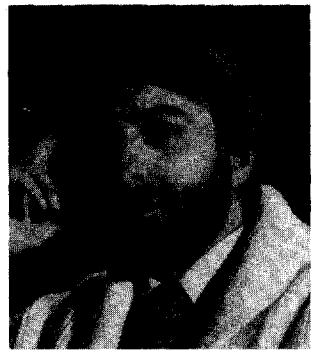

# The Second American Revolution?

In the November 1994 *Notes From FEE*, Dr. Hans Sennholz predicted a coming "turning point:" "Liberalism is intellectually bankrupt and has nothing going for it but its willingness to apply brute force and crude deception. . . . The forces of freedom will have another opportunity to turn the ship around."

I doubt that he, or any of us, knew just how soon that opportunity would present itself. That same month, voters across the land handed liberalism a stunning repudiation at the polls. Everywhere, aging champions of the welfare state were sent packing by young insurgents who campaigned *explicitly* on platforms of cutting taxes, slashing spending, reducing the size of government, repealing regulations, and unleashing free market forces. (The few exceptions were in states where challengers ran as vacuous moderates, or where questions of personal character clouded the choices.)

The 1994 mid-term elections were a watershed ideological referendum on the size and scope of government. Veteran liberal icons in Congress, holding the highest positions of power, campaigned openly on their commitment to redistributionist programs, their political clout, and their ability to deliver pork to their constituents. They also used tried-and-true fear tactics, declaring their opponents would cut Social Security and Medicare.

By contrast, their challengers campaigned openly on a sweeping anti-statist agenda—a signed pledge to cut taxes, regulations, social welfare programs, foreign aid, and government employees, while enacting constitutional amendments to balance the budget, limit taxes, and terms of office.

The results? Asked to choose between more government or more liberty, voters repeatedly chose liberty. The purveyors of pork were routed; the most senior liberal leadership in Congress, decapitated.

Ballot initiatives confirmed the message. Term limits and tougher anti-crime measures were enacted in state after state. In California, a measure to cut off government assistance to illegal immigrants won handily, while the same voters repudiated an initiative to impose Canadian-style socialized medicine, by a 3–1 margin. Even in leftist bastions such as San Francisco and Berkeley, voters enacted tough new measures to control homeless vagrants; and in liberal Massachusetts, the electorate abolished rent controls, rejected a graduated income tax, and imposed term limits.

Exit polling data made the voter mandate clear. Asked in an NBC/*Wall Street Journal* poll, "Who do you want to take the lead role in setting policy for the country—President Clinton or the [new] Congress?", voters

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*Mr. Bidinotto, a Staff Writer for* Reader's Digest, *is a long-time contributor to* The Freeman *and lecturer at FEE seminars.*

Criminal Justice? The Legal System Versus Individual Responsibility, *edited by Mr. Bidinotto and published by FEE, is available at $29.95 in cloth and $19.95 in paperback. Please see page 64 for details.*

answered "Congress" by a 55–30 margin. Two-thirds of them said President Clinton should abandon his own agenda, and instead compromise with Congressional Republicans. Voters preferred the policies of Congressional Republicans on crime, taxes, Social Security, and Medicare—even health care, the President's pet issue.

Years of patient educational efforts by free-market intellectuals are finally paying off, resulting in a sea change in public attitudes about the relation of the individual to the state. The leading insurgents now taking office are not old-school politicians. Some are even former teachers of history and free-market economics, who bring a principled underpinning to their policy prescriptions. They understand their philosophy and their mandate, propose a radical agenda to downsize government, and assert a feisty unwillingness to compromise.

On their agenda: adding property rights protections to all environmental laws; liberalizing foreign trade; even replacing the federal income tax. Off the table: socialized medicine; new tax and spending initiatives; and the dispatching of American Marines to every nation whose name ends in a vowel.

What's left of the Left is quaking. A *Newsweek* headline: "Goodbye Welfare State."

But that (unfortunately) is an overstatement. Though in disarray, the forces of the Statist Quo won't surrender their power and perks easily. Rome wasn't built in a day—and won't be dismantled in a day. In fact, the biggest barriers to reform are likely to arise from within the Republican Party itself.

The GOP stands precariously on deep philosophical fault lines, and already we're hearing rumblings of coming tremors that could shatter the revolutionary coalition. Arrayed against the free-market forces within the party are at least three pro-interventionist factions, determined to take the tastiest items off the anti-statist reform menu.

The *value liberals* in the GOP endorse liberty on social issues, but want more government intervention in our economy. The *value conservatives* endorse economic liberty, but think government should police our personal and social values. (Nationalist and populist sub-factions also would curtail free trade and immigration.) In the muddle-of-the-road are *business pragmatists*, the "mainstream" ballast of the Republican Party. These corporatists, country-clubbers, and supply-siders reject laissez-faire, and would instead wield state power on behalf of business and special interests.

Sadly, no prominent Republicans consistently oppose state encroachments on liberty. Even the best of them, the free-market conservatives, who are quite principled on economic and property matters, still pay lip service to the need for some moral interventions into the private lives of individuals.

These free-market insurgents are concentrated largely in the House of Representatives. But the fate of the election—and the resurgent Republican Party—will be sealed when their reform wish list passes that body, and goes to the Senate. What will the more pragmatic Senate leaders then do? Will they get in line behind it—or compromise it all away, proclaiming "bipartisanship," egged on by special interest constituencies?

We truly may be on the threshold of a Second American Revolution. But if the reforms fizzle, as they did under Reagan, voter rage will boil over. Then both major parties will find themselves justly discredited and hounded from office.

Yes, this is an unrepeatable opportunity. But what the new Republican Congress does about its own favorite pork programs (such as farm subsidies) will become a litmus test of its real commitment to principled reform.

In the meantime, we must continue our job of education. The voters' preference for liberty and limited government is still more implicit than explicit. They need intellectual ammunition to fight off future counterattacks from collectivists, who are sure to regroup. Our job is to arm them.

How? By continuing to stand firm on principle. We must buoy those who might waver in the coming battles, and—in George Washington's immortal words—raise a standard to which the wise and honest may repair. □

THE FREEMAN
IDEAS ON LIBERTY

# The First Atomic Age: A Failure of Socialism

by Rodney Adams

The first Atomic Age began with high hopes, but it has languished, being replaced in succession by the Space Age, the Computer Age, and the Information Age. Atomic planes, trains, and remote power stations discussed by 1940s visionaries were never built. Atomic powered ships, able to operate for years without refilling their fuel supply have seen limited civilian and military application. Most are now museums or being laid up as anachronisms. Nuclear submarines, powered by compact engines able to push their massive bulk at high speeds for years without any atmospheric intake or exhaust are widely thought to be expensive Cold War relics with no real mission or lesson to offer.

*Following twelve years of service in the Navy's Nuclear Power Program, Mr. Adams founded Adams Atomic Engines, Inc. He resides in Tarpon Springs, Florida. Says Mr. Adams, "I believe in the power of a competitive market to encourage the kind of problem-solving thinking that has allowed men like Edison, Bell, Ford, and Gates to produce revolutionary products." In June 1994, he published an article in the U.S. Naval Institute Proceedings titled, "Submarine Engines of the Future."*

## Hype Versus Reality

Was it all hype? Were Dwight Eisenhower, Al Gore, Sr., Isaac Asimov, Alvin Weinberg, Leo Szilard, Enrico Fermi, Lewis Strauss, and H.G. Wells all wrong in their predictions for a new source of abundant energy? If not, how did the present stagnation in the industry happen?

First the facts. Uranium is abundant. One indication of the enormity of the resource is that the United States has an existing stockpile of enriched uranium large enough to fuel over 1000 Trident class submarines for fifteen years. Another indication is that the price of natural uranium has fallen so low that domestic mining companies are crying for protection from foreign "dumping."

Uranium, thorium, and plutonium are concentrated energy sources. One pound of any of them contains as much potential energy as 2,000,000 pounds of oil or 2,600,000 pounds of high grade coal.

Uranium, thorium, and plutonium have all been used as fuel in fission reactors. Fission waste products weigh less than the initial metal used for fuel and are compact enough to be completely retained within the reactor core. Each year, we produce approximately 4,000 tons of spent fuel from all 108 nuclear electric plants in the U.S. while a single 1,000 megawatt electric (MWe) coal station produces that much ash every day.

A 1,000 MWe nuclear power plant uses about seven pounds of fuel each day and produces no carbon dioxide. A 1,000 MWe coal plant burns 11,000 tons of coal and produces 42,000 tons of waste gas every day.

A total of three people have been killed by nuclear accidents in the United States in the forty years that we have been operating power reactors. All three were killed in a single accident at an experimental military reactor in the early 1960s. Not a single person has ever been killed handling the waste from a nuclear power station.

The Atomic Age was not stopped by protesters, mismanagement, technical hurdles, economic hurdles, or heavy regulations. All of these may have played a role, but they were more symptoms than causes.

The true reason that atomic power has not yet fulfilled its promise is that the industry was established and operated as a socialist enterprise. Like all other experiments that prevent innovation, experimentation, and individual rewards it was doomed from the beginning.

## Nationalized Atom

By 1946, the power available in the nucleus of certain heavy metals was well known. The extent of the heavy metal resource was not fully understood, but there were indications that there were extensive deposits. The means for using the power were not yet known, but scientists and engineers were confident that the heat produced by fission could be put to good use. If atomic power had been like other technological developments, there should have been rapid innovation and eventual commercialization.

Unfortunately, politicians thought that atomic power was different. Although the basic science had been developed over a period of decades with most work taking place in European laboratories, American congressmen, secure in their belief that the United States was the world's only remaining technological power, claimed atomic energy as domestic property. They also decided that no one but the government could be trusted with the awesome power contained in tiny atoms and nationalized the whole industry.

All nuclear knowledge was declared secret and U.S. scientists were forbidden to discuss their work with even such notable colleagues as Niels Bohr, whose liquid drop model of the nucleus had helped explain how fission worked, and Bertrand Goldschmidt, a French chemist who developed a plutonium extraction process as part of the Manhattan Project. Uranium gained a new name as "special nuclear material" and was declared to be federal property. Inventors of devices designed to use special nuclear material were required to give their patents to the government who would then decide on just compensation.

A commission was established to decide how best to proceed with the development of atomic energy. The commission was given the responsibility for the national laboratories that had developed atomic bombs. They took several years to decide how to organize themselves. Most of the scientists and engineers involved with the Manhattan Project returned to their pre-war duties while the Atomic Energy Commission was figuring out their priorities.

Within three years the Soviet Union exploded their first atomic weapon, making it obvious to the world that atomic energy was no longer a U.S. monopoly. It took five years for Congress to recognize this and take action to loosen some of the controls established by the Atomic Energy Act of 1946.

## Socialized Atom

Bureaucracies relinquish control reluctantly; many onerous provisions of the Atomic Energy Act of 1946 were retained when the new act was passed in 1954. The government maintained ownership of all special nuclear material and provided a means to license it to users who would then pay a "reasonable" fee to the government for its use. Of course, the fee was determined by bureaucrats based on complicated formulas and obscure cost accounting.

About the same time that the Atomic Energy Act of 1954 became law, the USS Nautilus reported that she was "[u]nderway on nuclear power." Her performance during the subsequent demonstration period made headlines. Her builders gained head of the line privileges at the Atomic Energy Commission which had to approve and license any new reactor designs.

Although the Nautilus's power plant was functional, it had many limitations. It depended on keeping water under extreme pressure so that it would remain a liquid at temperatures far above the normal boiling point The hot, high pressure water was a potential hazard with even small leaks in the lengthy piping systems. The valves, pumps and piping required specialized materials since hot water is an excellent solvent and is

quite corrosive. The reactors needed fuel with a higher concentration of U-235 than was found in natural ores, requiring the use of a complex process of isotope separation.

Despite the difficulties, the pressurized water system was probably the best that could be rapidly produced under the technology constraints existing in 1950. It was suited for the specialized application of a submarine because it was far more capable than diesel engines combined with batteries for underwater operation and because the enrichment plants were already built and producing products for the weapons programs. There was no way that the submarine system could compete economically with engines burning oil costing less than $2.00 per barrel, assuming that air and exhaust space was freely available.

The President and certain congressmen who were interested in using the new form of energy for civilian applications decided it was in our national interest to encourage the nuclear industry. From their point of view, the natural customer would be the electrical generating industry, one they were familiar with from the government's involvement in public power projects. They invited some utility industry representatives to Washington to discuss their needs.

The contractors who had built the Nautilus, the Seawolf (a submarine with a sodium-cooled reactor plant), and the land based prototypes were invited to the government discussion because of their nuclear experience. The contractors involved in the government work were mammoth companies, used to doing things in a big way. Their governing economic philosophy was similar to those of the state agencies in the Soviet Union, i.e. if a piece of machinery is not economically competitive, make it bigger. This matched the economy of scale concept that the utility companies had been taught by Samuel Insull.

These three groups, utilities, contractors and government bureaucrats, decided where best to concentrate their efforts to develop civilian nuclear energy. The decisions seemed right to the queried group; light water reactors would be developed because they were proven energy producers, and they would be made bigger, assuming that would make them cheaper. The U.S. monopoly on enrichment services might have played a role in this decision. Some effort would be made to produce sodium-cooled breeder reactors, based on the Seawolf technology and on plutonium extraction technology from the weapons programs. These would also be made economical by increasing their size.

## Bigger Is Better?

Of course, many people with an interest in energy production were left out of this decision process. There were no farmers, railroad executives, airline operators, ocean shippers, steel mill operators, gold miners, or aluminum smelters at the table even though their industries are highly dependent on energy inputs. No invitations were issued to entrepreneurs or inventors. Because of the government's secrecy about the technology, most of them did not even know that nuclear energy existed or that it could be used to meet their needs. Most of the mentioned groups still have no idea what nuclear fission could do for them.

The results of the socialistic decision are now clear. The bigger the plants got, the more complex they became. They became more complex to build because the increased size of critical components like pressure vessels, reactor coolant pumps, containments, and steam generators made fabrication, inspection, and transportation uniquely difficult compared to other energy production systems. They became more complex to finance because the huge electricity factories required multi-company partnerships, large bond offerings, and a whole coalition of banks. Raising billions for a single project is a time-consuming and costly endeavor.

They became targets of intense opposition that seemed to intensify in the mistrust of government and major industry prevalent in the 1970s. Compared to other regulated industries, they became a nightmare for bureaucrats. Proof of safety became a dif-

ficult issue with heavy reliance on complex computer modeling techniques. Unlike commercial airliners, for example, reactors are simply too big and expensive to fully test. Regulators, given only the responsibility to ensure public safety, appear to feel that the best way to do their job is to make licensing as difficult as possible.

Because nuclear power plants are almost universally viewed as huge, capital intensive, risky, and potentially hazardous no new plants have been ordered in the United States since Gerald Ford was President.

Things might have turned out differently if atomic energy had been developed by entrepreneurs.

## Entrepreneurial Atom

Suppose there had not been a Hitler or a Mussolini active in 1938 when Otto Hahn announced that he had found barium in the sample of uranium he had bombarded with neutrons. Maybe Enrico Fermi would have stayed in Europe and continued his work, perhaps forming a research partnership with Leo Szilard, who had already filed a patent for a power producing reactor. Being scientists, they would have widely published the results of their experiments, demonstrating to the world that uranium was a potent new source of energy. Even if they had gone on to other projects, others might have taken up the research.

A smart money man, perhaps one who had spent his life finding oil in difficult places, or one who had cut his teeth in a coal mine, or one who had spent a lifetime eking out small efficiency gains in oil-burning steamships might have recognized the significance of a compact energy source and seen a way to turn this scientific knowledge into a useful and profitable product. He might have been enough of an inventor to see that fission could be a heat source able to function in any system normally heated by burning coal or oil. He would have recognized that some applications would be entirely new since fission needs no oxygen supply or means for routine dispersal of waste products.

An entrepreneur would keep his risks as low as possible. He would not have government insurance or contracts to bail him out if he failed. Any engines would be based on natural uranium since the enrichment process would be viewed as too risky and expensive to attempt. He would test his new product to ensure adequate safety. He might concentrate on finding premium markets where high margins would allow him to write off development costs in the shortest possible time.

He would do extensive research, seeking to determine where his product could beat the existing competition. He would base his decisions on both study and "gut feeling" from extensive personal experience of how the world uses energy. A market for an atomic engine that would have been familiar to a 1940s entrepreneur would have been a high speed ocean liner, like the Queen Mary, which burned approximately 1,000 tons of fossil fuel per day during Atlantic crossings.

Using the proceeds from sales to premium markets, he would push his developers to design products that could serve the widest possible market, knowing that diverse customers increase income and protect against cyclic economic pressures. Instead of moving toward bigger plants, he would have realized that smaller engines would find more customers. He might have tried limited enrichment at this point in order to reduce the size of his engines.

The money man would have understood that he had to tell people about this fantastic new product. Magazines, newspapers, television, radio, and billboards would all have been full of advertisements trumpeting the ability of atomic engines to push stackless, smooth running ships across the ocean for years without needing new fuel.

The entrepreneur would arrange special demonstrations for dignitaries and influential members of the media. He would work to attract additional investors for his capital-hungry endeavors. He would develop partnerships and arrange for lease purchases of his engines for customers unwilling or unable to afford the initial capital expense.

Competitors would have surely appeared after seeing the success of the initial pioneer. They would develop better systems that could lure customers away from the established company. They, too, would look for ways to broaden the market. Some design standards would have been established to take advantages of the installed base of trained operators and suppliers while still allowing room for product differentiation.

The industry would have been attacked. There would have been people genuinely concerned about potential hazards and others more selfishly concerned about their jobs and investments with existing energy suppliers. The enormous industry involving the supply, transportation, storage and marketing of coal, natural gas, and oil would have been particularly vocal and possibly violent. The adolescent nuclear industry might have decided to form an industry group to lobby for its own interests and to refute bogus claims from the competition. They would commission studies and ensure that their advertising outlets provided balanced coverage of the hazards of their industry versus the competition.

There would probably have been some people who saw the leftovers from reactor operation as potent new raw materials and made arrangements to take the waste off the hands of the reactor owners. The reactor operators would probably have taken whatever price was offered by this budding scrap industry, preferring to concentrate on figuring out ways to take advantage of the new systems that were being offered by the engine manufacturers. The engine manufacturers might have become customers of the scrap industry for raw materials for new engines.

There would have probably been some notable accidents during the early phases of this new industry. The industry would have learned from the accidents and figured out ways to prevent their recurrence. Engineering societies would have played a strong role in establishing construction and operation codes. There might have been several pioneering companies that collapsed because of lack of vision, poor management, failure to recognize competition, or inability to correct design faults. This is probably the point where the government would have become involved. Up until then, the government would not have recognized what was going on in the exciting new industry.

This whole business might have gone on for years before anyone mentioned that the incredible energy available in uranium could be released fast enough for a militarily useful explosive. By that time, it would have been far too late to attempt to impose a government-owned monopoly of "special nuclear materials."

## Lessons

The above is speculative hindsight, of course, but it holds important lessons for us in 1995, as we work on new information systems, flat screen display panels, and options to fix a supposed crisis in medical care.

Even democratic governments are poor managers of new technology. They are worse when they choose a socialistic model for their enterprise. Governing bodies respond better to existing interests than they do to people with fresh ideas who want to alter the status quo. Because of their competing interests and regular changes of the guard, bureaucrats are doomed to fail in a pioneering effort that requires singleness of purpose and continuity of effort.

The solution is for the government to allow innovation to occur, keeping in mind its responsibility to respond to dangers to the common good. Whenever governments begin to protect chosen industries or work to encourage their development, they inevitably make decisions that have impacts they did not intend.

Perhaps it would be beneficial to fully open the debate about nuclear energy, this time allowing all interested parties to participate. The best forum for such a debate is the free market with its competition and ability to handle more decisions at one time than any politically selected management body. Although it is not recognized as such by liberals, the market is an ideal body for making tough decisions. □

THE FREEMAN
IDEAS ON LIBERTY

# Nuclear Power: Our Best Option

by Mike Oliver and John Hospers

With monotonous regularity over the last generation, the American people have had the following statements so constantly drummed into them by the media that most Americans, it seems, have come to believe them:

1. Fossil fuels, such as coal and oil, are dangerous pollutants, and anyway we are running out of them.

2. Nuclear power is so dangerous that it cannot safely be used; indeed, the nuclear facilities already in existence represent such a mortal danger that they should be shut down.

3. But there is one hope: power derived from the sun and winds. These are infinite in quantity, or at least indefinitely great; and they are also safe and clean. All we need is a few years in which to develop this kind of power, and our energy needs will be taken care of.

Only the first of these three statements is true, with some qualifications. The second and third statements are utterly false, although it is popular to believe that they are true.

*Mr. Oliver is a retired engineer living in Carson City, Nevada. Dr. Hospers, this month's guest editor, is professor emeritus of philosophy at the University of Southern California, and is the author of numerous books such as* Understanding the Arts, Human Conduct, *and* Introduction to Philosophical Analysis. *He was the first Libertarian Party candidate for U.S. President (1972).*

## Fossil Fuels

Thus far, most of our energy needs have been met by fossil fuels: coal, oil, and natural gas.

Almost half the coal in the world lies under the United States. For more than a century American locomotives were fueled by coal, and even today coal is a major source of energy. Fortunately it is one commodity that America does not have to import.

But coal lies underground, and digging for it is dirty and dangerous. We can all remember reading of accidents in coal mines, with miners trapped far below the earth till they died of starvation or thirst, or were asphyxiated by lethal gases. And even after it is above ground, coal is a dirty fuel. Since 1907, 88,000 miners have died in accidents and from effects involved in American coal mining. The 1952 London fog that killed 3,900 people was the combined result of innumerable coal fires.

Oil is somewhat less dangerous to extract from the earth than coal is, but it is far more dangerous to transport and store. Oil storage tanks often catch fire. The city of New York was endangered several times by such fires, and loss of life was prevented by rain and change of wind direction. Large trucks filled with oil sometimes are involved in accidents on highways, killing not only the people who have volunteered for the dan-

gerous job of transport, but passengers in other vehicles who happened to be in the vicinity of the burning oil trucks.

Are we running out of oil? Gradually, not very rapidly. In 1930 it was widely publicized that there was only enough oil for American cars for another ten years. Now it is 1995, and the world is still awash with oil. Oil continues to be discovered at numerous places around the world. Tremendous amounts of oil and natural gas were discovered near Prudhoe Bay in Alaska, but the wells were capped and the discoveries were stopped, in line with the general policy of the Carter administration to place most of Alaska off limits to development. (The dramatic story of the discovery of this oil and gas, and the decision not to use it, is told in Lindsey Williams' book, *The Energy Non-crisis*.)

In spite of its prevalence around the world, we can't keep on using oil and gas forever; we are using it up about a million times faster than it takes nature to form it. Perhaps it is wise to husband our resources and use the foreign oil first. But this does not appear to have been the thought in the minds of the U. S. government regulators who descended on the Alaska pipeline as it was being built and interfered with its construction endlessly, officially to protect the environment, but actually to prevent the completion of the pipeline. (This story is also well told in Williams' book.) A few examples will suffice: All work on the pipeline was stopped when birds were nesting nearby. All waste materials had to be bagged and shipped to Anchorage, where nobody wanted them, instead of remaining on the tundra, where they would have been harmless or even beneficial. "Caribou passages" were mandated, to enable the animals to pass the pipes without touching them, although, as it turned out, the animals preferred the warm spaces around the pipes and experienced no difficulty when they did have to jump over them. A thousand and one legal obstructions were erected to bankrupt the companies building the pipeline before its completion; it was all done in the name of the environment, though the obstructions in no way helped the environment, and in fact the enforcers constantly violated the very rules that they forced upon those who were building the pipeline: no workman could kill a native animal, but the regulators did so all the time. All this, of course, added considerably to the cost of the oil (from the pipeline) that was consumed by Americans.

Even more expensive in its consequences for Americans is our reliance on foreign oil supplies. In 1979 the Shah of Iran abandoned his throne at the urging of the American government. With this major source of oil cut off, there was an oil shortage in the United States, and millions of Americans stood in line at gasoline pumps. The price of oil increased from $15 to $32 a barrel—a major factor in the increased cost of living. And even today we still protect with our servicemen's lives the foreign oil supplies that are controlled by hostile sheiks and ayatollahs. If we did not rely so heavily on this oil, we could thumb our noses at such monarchs. Meanwhile, our energy use is constantly increasing, and it is more important than ever to stop relying on foreign energy sources if we don't want a far worse replay of 1979.

Besides all this, fossil fuels are detrimental to our atmosphere. The more of them we use, the more we help to destroy any chance of a clean non-toxic environment. It is, indeed, imperative that we find some alternative to the fossil fuels we have always used in the past.

## Solar Power

Americans have been told to believe that since fossil fuels are a non-renewable resource, and dangerous to handle and to obtain, the search for other energy sources is imperative. Thus far they are correct. But as to the kind of energy source we should try to develop, the popular belief is that nuclear energy is too dangerous for us to develop further, and that the real answer lies in "natural" energy sources (as if they were not all natural!) such as sun and wind, as well as geo-thermal sources such as hot springs, and fossilized fertilizers such as

guana. But this last belief is the exact opposite of the truth: the solar and other "natural" sources can never be more than a tiny portion of our total energy source, and the nuclear can not only be a principal source, but by far the least dangerous one.

The idea of cultivating the sun and wind as sources of human energy is aesthetically appealing. It appeals to our impulse to "return to nature." Sun and wind are clean, aren't they? They don't make a mess, they don't pollute, and they certainly don't appear to be dangerous. Isn't it just a matter of waiting a few years until we develop the required degree of solar and geothermal technology?

It is a thankless job to dispel an appealing and popular delusion. It's not as if this were a new idea, which is only now dawning on the human race. Wind power, in the form of windmills, has been used for many centuries. People have used hot springs as a heat source when it was available, which isn't in very many places in the world. All these so-called "alternate energy sources" together fill less than one half of one per cent of our energy needs. If we relied on them, the lights of civilization would go out. They play almost no role in providing power for the cities of the world, or even for farms and villages.

This is not for any lack of attempts. It is because of basic facts of nature which every physicist knows but which people don't want to believe because the idea of solar power is so appealing. It's not our technology that is the source of the problem; if it were, *that* could be developed in time. The problem is not with technology but with the laws of physics themselves, which as far as we know never change. The simple fact is that solar power comes to the earth at the very dilute rate of 1 kilowatt per square meter, at best. The amount of energy emanating from the sun to the earth, and the facts about its dispersal, have been known for many years; they are constant from year to year, century to century. Nothing that human beings can do can change this.

Nor is this the end of the problem. Consider what would have to be done to make actual use of the sun's energy to create electric power. To heat one sizable swimming pool with solar power, you need a set of heat-collectors spread out over your roof or lawn. The area required to provide this heat is truly staggering. A 1,000-million-watt power plant, whether nuclear or fossil-fueled, needs about 25 acres for the plant plus storage facilities. But "a solar plant producing that same amount of power (with 10 percent efficiency and 50 percent spacing between the collectors) would need *50 square miles*."[1] To provide sufficient electric power for New York City, at its present rate of use, would require collectors spread out over 300 square miles—a considerable part of Long Island (and what would the present inhabitants of Long Island do, and where would they go, if they were about to be replaced by such collectors?).

But the situation is worse than this. The sun's rays are not strong during cloudy days, and aren't received at all at night; so any solar plant would have to be designed for a much higher capacity than has just been described. (Anyone who depends on solar heat for his swimming pool knows this at first hand.)

The same is true of the wind: it doesn't blow all the time, and when it doesn't, ordinary windmills are useless. Wind systems would have to have unimaginable large and expensive storage systems. The upkeep alone on these systems would be prohibitive, as well as the hazards to health and environment from the use of the chemicals required to keep the collectors clean and functioning. And as for wind power, covering the United States with 40,000,000 windmills (or thousands of miles of solar equipment), plus the extraction and processing of the enormous quantities of materials needed for such systems (we might soon run out of them), would precipitate an ecological disaster of unparalleled proportions. Those who have been "out in the field" with these "alternative energy sources" know the result well enough: officials in California complained that the windmills produced superb tax shelters for "alternate energy" suppliers, but very little electricity.

It is time that this hoax was laid to rest. Proponents of solar, wind, and geothermal energy have yet to produce a single shred of real evidence that solar energy would ever be feasible on the scale required to provide power for the inhabitants of a planet whose very existence depends on the use of energy. It is not too much to say that 95 percent of America's population would perish without the availability of modern energy to operate our farms, hospitals, factories, schools, and other facilities. Perhaps this would please some ecologists, but are they willing to sacrifice themselves on this altar, or do they claim that there are too many of "you others"?

## Nuclear Power

Our best energy option for the indefinite future is nuclear power. It is already in use without mishap in other nations: about 70 percent of France's energy source is nuclear (France has almost no oil or coal, so there wasn't much choice—go nuclear or go without energy). But there have been no nuclear mishaps in France.

About 25 years ago, newscaster Edwin Newman told the American people in an NBC broadcast that our rivers would boil within a decade because of the thermal pollution from nuclear power plants. Jack Anderson once claimed that a white nuclear cloud was descending on Denver. The *Las Vegas Sun* converted a one-millirem leak near Beatty, Nevada, into a full-blown nuclear cloud, which was descending on the community about five miles away. By the time it reached Beatty the millirem was distributed through about 500 cubic miles of air. We get about fifty times that much radiation from a simple X-ray distributed over the puny volume of a single human being.

In the face of such concerted propaganda, it is no wonder that Americans are fearful of nuclear power. They are not told the facts of the case, nor even of places where nuclear power is successfully and safely used. It is fortunate that the facts are as they are, rather than as they have been painted to the American people, for if they were as painted, we would soon have to go without most of our light, heat, and electric power. The energy source that has been advertised to us (sun and wind) is a delusion; if we had to depend on that we would be doomed. But the energy source that we have been told is fraught with mortal danger is, fortunately, and contrary to popular opinion, cheap, clean, and comparatively safe. In it lies our best hope for the future.

Meanwhile, the "alternate energy" advocates are urging us to dismantle our nuclear power stations, to stop exploration for domestic oil, to curtail construction of coal-fired plants, and to start basing our existence on their "tomorrow we will do it" promises. Jane Fonda and Tom Hayden succeeded in shutting down the Rancho Seco nuclear power station near Sacramento. Some of their disciples went house to house telling mothers that their children would glow in the dark unless that plant was dismantled. And yet the population of Sacramento is growing at an explosive pace, and so is their need for electricity.

How is it possible, in the span of a brief article, to prove the *comparative* safety of nuclear power? Here are a few examples of how nuclear power works and what its effects are on consumers of that power. For an excellent longer treatment, see Petr Beckmann's incomparable book *The Health Hazards of Not Going Nuclear.*

1. *How safe are our nuclear reactors?* Very safe indeed, compared with any other kind of power. Every nuclear reactor is built on the principle of *defense in depth.* In October 1966 a metal plate broke loose in a reactor, partially blocking the flow of coolant, overheating two of 100 fuel assemblies and melting some of their fuel. The reactor was promptly shut down, and all precautions worked as planned. As Beckmann says, "If the reactor had lost its coolant, it would have been automatically replaced. And if it hadn't, the containment building would have contained the radioactivity. And if it hadn't (though it is hard to see why not), it would have disperse into the atmosphere without doing any harm. And if it

hadn't, because a temperature inversion kept it near the ground, a slight wind in an unfortunate direction would have had to blow it 30 miles to Detroit before a Detroit fly got hurt." (Beckmann, p. 50) And yet this incident was the subject of a book, *We Almost Lost Detroit*, which scared many readers half to death with a flagrantly unscientific account of what occurred.

2. *What about radioactivity?* The International Commission on Radiological Protection has set 500 millirems as the maximum permissible annual dose that an individual should receive. "A single chest X-ray will expose the patient to some 50 mrems; a coast-to-coast jet flight will expose the passengers to some 5 additional mrems; watching color television will deliver an average of 1 mrem per year. Yet all of these doses together are smaller than the dose the average U.S. resident obtains from Mother Nature: 130 mrems per year. Most of this comes from cosmic rays, the ground, and from building materials." (Beckmann, p. 56) For example, Grand Central Station in New York has so much radiation emanating from its granite blocks that it violates all permissible standards for nuclear plants. Now, "how much do all the U.S. nuclear plants add to the dose of 250 mrem per year that the average U.S. citizen receives already? About 0.003 mrems per year. Yes, that is what the nuclear critics are protesting: 0.003 mrems on top of the 250 mrems that they get anyway." (p. 58)

In thirty years of operation, not one death, not one injury has resulted in the U.S. from nuclear plants or radioactivity. The Three Mile Island accident did not cause a single casualty, and the extra radiation the residents in that area received during that event was less than half the dose each airline traveler gets by flying from Boston to Seattle. Radon gas gives millions of American home-owners hundreds of times more radiation than they receive from all of our nuclear plants combined. And even this is not nearly the problem it was previously deemed. Moving up one floor in an apartment house gives tenants more extra radiation than all the nuclear plants do.

"But nuclear reactors *are* clearly unsafe. Consider what happened at the Chernobyl plant in the Soviet Union in 1987." Very well, let us consider it. The main differences between the Chernobyl plant and ours are these: Ours were designed to give maximum safety to their neighbors; theirs was not. Heat increases in our reactors cause their reactivity to go down, but reactivity in Chernobyl models increases with heat and therefore self-accelerated the Soviet unit to destruction. Ours are surrounded by containment buildings; theirs was not. Our plants had multiple defenses in depth; theirs did not. These were among the facts given in a report by a team of U.S. experts, led by former National Academy of Science president Dr. Frederick Seitz and Nobel Laureate Dr. Hans Bethe—both of them members of Scientists and Engineers for Secure Energy.

The Chernobyl accident killed 31 people from radioactivity; an unknown number are still dying of cancer. Yet if, a month after the Chernobyl accident, one were to drink 60,000 gallons of "Chernobyl contaminated water," he would have received the same amount of extra radiation as from a simple thyroid check. Many "radioactive deer" in Finland and Scandinavia were slaughtered, but the killing stopped when some people, including scientists in those countries, offered to buy and eat the meat. Since the beginning of time each of us had thousands of times more radioactivity in our bodies than the extra amount found in these deer.

3. *What of nuclear wastes?* Here as elsewhere, one has to unlearn what one has been told. When the uranium in a nuclear fuel rod has been spent, it remains radioactive, and is immersed in pools of cooling water for a few months to allow the short-lived radioactivity to go down. The spent rods are shipped in sealed casks to fuel reprocessing facilities, which separate out the uranium and plutonium. There is no physical problem with all this—a reprocessing center can handle many tons of fuel per day. The problem in the United States has been not physical but political. The Carter administration was filled with people who wanted us

to perform miracles and go solar immediately. They hindered offshore oil drilling and, to vanquish nuclear power, prohibited further recycling of nuclear residues. As a result, these residues—which today constitute a 300-year source for our nation's electricity needs—started to accumulate at power plants. The anti-nuclear lobby, which caused this accumulation in the first place, now claims that these "wastes" are a main reason why we should shut the plants down. When sealed and packaged to U.S. specifications, this material is not dangerous—it is far safer than open wastes from oil or coal.

Nuclear power plants provide the safest, cleanest form of energy the world has ever known. Yet "alternative energy" advocates attack it as unsafe, and propose instead something far less safe, which in any case cannot be put into operation on a large scale. Instead of facts, they give us scare stories, which find a receptive audience because that which is new is always, or can easily be made, very frightening. The fact is that safe and inexpensive nuclear power is now available and can easily be developed further to provide clean energy for vehicles now run on oil.

The anti-nuclear lobby is not strong enough to turn off our lights and factories completely; they are not (yet) demanding that we deactivated our fossil-fired electricity plants. Yet they have already done considerable damage. (1) They have stopped us from building new nuclear power stations. (2) They have prevented the operation of fully or nearly completed nuclear power plants, which are required to fill the burgeoning energy needs of New York and other cities. (3) They have blocked the reprocessing of nuclear residues, and thus denied our country access to an enormously large, environmentally clean energy source. And (4) they have thus far prohibited the burial of the same nuclear residues at *any* site.

Let me propose something which is very unusual, but which is needed to dramatize to the American people that the alleged hazards posed by nuclear residues is a sham. Let us build, privately, a 50- to 100-room hotel on top of the site under which the U.S. government buries these "wastes" in sealed containers. The authorities will probably oppose the building of such a hotel, but we may get experts to testify in court that we would be safer there than in over-insulated radon-infested homes.

Let such a project be used as a vacation resort, where some of us, including scientists, and their families, will occupy a room for an average of seven days per year. The one week per year idea is not inspired by radiation fears, but by the belief that no one should have to spend more vacation time in a specified place to prove that the nuclear waste issue is a hoax. □

1. Petr Beckmann, *The Health Hazards of Not Going Nuclear*, p. 125.

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THE FREEMAN
IDEAS ON LIBERTY

# The Immorality of Social Security

by John Attarian

Social Security's defenders routinely laud it in moral terms, as "our most successful program of social reform,"[1] a humane, compassionate response to the needs of the elderly. One work puts it this way:

> None of us knows his or her fate. Today's good fortune can turn into tomorrow's disability. Most of us will gradually move from vigor to diminished capacity, and we will need help. All of us should ensure that such help will be there, just as we should extend help to those who need it today.
>
> The prime method of doing so is called social insurance. And the doing of it is called civilization.[2]

Social Security in other words, is part of what it means to be civilized and moral.

In truth Social Security's immorality is as monumental as its actuarial deficit, estimated under pessimistic assumptions at $23,188 billion as of January 1, 1994.[3]

To begin with, the system is, as Alf Landon described it in 1936, "a cruel hoax."[4] Social Security raises revenue by taxing worker incomes, then uses it to pay benefits to retirees, disabled persons, and other beneficiaries. Any money left after paying benefits and administrative costs is lent to the Treasury in return for special interest-bearing government debt, which can be redeemed as needed for money to pay benefits. Social Security, then, is a welfare program redistributing money from taxpayers to beneficiaries.

## "Insurance"

Yet millions of Americans believe that Social Security is a retirement insurance program. They believe that the money they are paying into it is being invested and will be paid back with interest when they retire. They believe that the benefit money belongs to them by right and that they have earned it. A letter to the *Wall Street Journal* expressed the view of many:

> . . . Social Security is not an entitlement program, but a savings system.
>
> When the government sends a Social Security check to an individual, it is not giving him anything; it is paying him back a portion of the money he has saved for his retirement through a special retirement plan. The money belongs to the individual, money owed to him, money systematically and forcibly taken from his paycheck as security against a time when he will be too old to work.[5]

Such misunderstanding (except the part about forcible extraction from one's paycheck) is the result of assiduous and dishonest use of insurance terminology by Social

*Dr. Attarian is a free-lance writer in Ann Arbor, Michigan.*

Security and its intellectual advocates. Its payroll taxes are euphemistically called "contributions."[6] The legislation authorizing them is titled the Federal Insurance Contributions Act (hence the acronym FICA).[7] Social Security's components are called Old-Age and Survivors' Insurance (OASI), Disability Insurance (DI), and Hospital Insurance (HI, or Medicare A). The *Social Security Bulletin* describes the program as "insurance," and its payments as "insurance benefits." A worker paying into the system is described as "covered" or "insured."[8] The Social Security Administration's free brochure *Understanding Social Security*, available at any Social Security office, assures readers that "we will honor your investment [sic] in Social Security."[9] It all sounds reassuringly that one is doing something like buying a policy from Prudential or Mutual of Omaha.

Unfortunately for the hapless "covered workers" making their "contributions," *Understanding Social Security* doesn't tell them about *Flemming v. Nestor*, the 1960 Supreme Court decision by which the wife of a deported Communist lost her benefits, even though her husband had paid Social Security taxes. Didn't she have a legal right to those benefits, since her husband had paid those taxes? Not according to the Social Security Administration, which argued that:

> The OASI program is in no sense a federally-administered "insurance program" under which each worker pays premiums over the years and acquires at retirement an indefeasible right to receive for life a fixed monthly benefit, irrespective of the conditions which Congress has chosen to impose from time to time.[10]

The Court concurred: "To engraft upon the Social Security system a concept of 'accrued property rights' would deprive it of the flexibility and boldness in adjustment to everchanging conditions which it demands."[11]

Congress has already acted repeatedly with "flexibility and boldness in adjustment"—or, baldly put, cut Social Security benefits. Flexible and bold adjustments in 1977 and after included eliminating benefits for orphans and children of disabled or retired workers, who are full-time students and 18–21 years old; postponing cost-of-living adjustments (COLAs) for six months in 1983 and allowing future COLA delays under certain conditions; raising the retirement age (which deprives retirees of the benefits they would have collected had the earlier retirement age remained in effect); taxation of benefits (in effect a benefit cut); eliminating the minimum benefit under most conditions; and tightening the conditions for receiving lump sum death benefits.[12] So much for the pledge to "honor your investment."

## Taxes versus Benefits

Social Security is disingenuous in another way about the relation between one's taxes and one's benefits. *Understanding Social Security*, i.e., the version of reality that the Social Security Administration produces for popular consumption, has it that the size of one's benefit depends on factors such as date of birth "and most important your earnings," and "In general, a Social Security benefit is based on your earnings averaged over your working lifetime."[13]

In reality, A. Haeworth Robertson, Social Security's Chief Actuary in 1975–1978 points out, "the relationship between taxes and benefits for an individual is so tenuous as to be virtually nonexistent."[14] This is because Social Security is a social insurance program, stressing "social adequacy." That is, "It pays benefits according to presumed need," and "no attempt is made to relate the benefits that a particular group of persons receives to the taxes paid by that group of persons to become eligible for such benefits." Two people in very different circumstances, say a married worker who dies leaving a wife and dependent children and a single worker who dies, may pay the same tax rates, yet the married worker's benefits will be much greater. While there is some indirect tie of taxes to benefits, it is "more tenuous than most people have realized, and this misunderstanding is an important factor

in any public dissatisfaction with the Social Security system."[15]

## Facing the Future

Similar deceit occurs regarding Social Security's future. *Understanding Social Security,* published in January 1994, opens by addressing the question "Is Social Security in Your Future?" and assures readers four times in three pages that "it will be there when you need it!"[16]

Yet for the past few years the annual reports of Social Security's Board of Trustees have warned that the system is not in close actuarial balance (i.e., projected future income doesn't match projected future cost) and that steps should be taken to strengthen the system and restore actuarial balance.[17] And just three months after the 1994 *Understanding Social Security* appeared, the trustees reported that the Disability Insurance trust fund is projected to run out in 1995, even under its optimistic economic and demographic assumptions. The Old Age and Survivors Insurance trust fund is projected to go broke in 2036 under the intermediate assumptions, in 2023 under pessimistic assumptions. Projected exhaustion dates for the combined funds (OASDI) are 2029 and 2014 under, respectively, intermediate and pessimistic assumptions.[18] These dates indicate considerable weakening in Social Security's position; the 1993 report projected OASDI exhaustion, for example, to occur in 2036 (intermediate assumptions) or 2017 (pessimistic).[19] Exhaustion of the Hospital Insurance trust fund, which pays Social Security's hospital benefits, is projected in 2004 under intermediate assumptions and in 2000 under pessimistic ones.[20]

And only actuaries and specialists know that Social Security's actuarial deficit, or excess of projected future costs over projected future revenues and trust fund assets, is soaring: under intermediate assumptions from $5,836 billion as of January 1, 1990, to $10,408 billion as of January 1, 1994; under pessimistic assumptions, from $14,282 billion to $23,188 billion.[21] Another indicator of Social Security's rickety long-term financial condition is its growing accrued unfunded liability. As of January 1, 1990, the unfunded liability for Old-Age and Survivors and Disability Insurance alone was $6,511 billion; four years later, it stood at $8,059 billion.[22] This is the amount of benefits that Social Security is liable to pay, but for which no money has been provided to pay them.[23]

*This* is the program that "will be there when you need it"?

As for the trust funds' assets, *Understanding Social Security* labels "false" the idea that the funds contain only "worthless IOUs" and asserts that Social Security's investment in government debt will be honored.[24] Alas, as former Chief Actuary Robertson acknowledges, "the trust fund assets have no tangible value [i.e., are worthless IOUs!] and represent only a claim on future federal revenue."[25] Social Security's investment will be honored only if the government forcibly extracts more resources from the private sector to repay it.

A private insurance company that took people's "contributions" for years; told them for years that they were "insured" with a "right" to benefits, without telling them it reserved the right to apply "flexibility and boldness in adjustment to ever-changing conditions" if for some reason it couldn't pay them; lied to its "investors" about the value of its trust fund assets; and repeatedly assured them that their money "will be there when you need it" even while its own experts were forecasting oncoming financial ruin and calculating actuarial deficits and unfunded liabilities running into the trillions, would, rightly, be deemed unfair, untruthful in advertising, and fraudulent. "A cruel hoax," indeed. What then is the moral status of Social Security?

But even a private firm writing such a fraudulent prospectus has one moral advantage over Social Security: its victims participate of their own free will. Obviously, a financial system—especially an unsound financial system—which coerces people into it is morally inferior to a voluntary one.

## Intergenerational Injustice

Social Security's coercive nature makes it inherently an engine of intergenerational injustice as well. It operates on a pay-as-you-go basis, meeting current expenses out of current revenues. Today's retirees are paid benefits with taxes levied on today's workers. That is, each generation is forced to support the previous generation, and as the program, and our population, have aged, the burden on each young generation has grown. And since the workers cannot leave the system their only hope of compensation for the injustice inflicted on them for the sake of their parents and grandparents is to have a similar injustice inflicted on their children and grandchildren.

This injustice is not altered by the trust fund surpluses which have accumulated since the 1983 tax increases. The only way the Treasury can get money to repay the bonds when Social Security presents them for payment, barring (unlikely) spending reductions elsewhere in the budget, is by extracting more resources from the workers by higher taxes or borrowing.

Social Security's intergenerational injustice could hardly be expected to endear the old to the young, and it hasn't. The Social Security literature speculates on a war—between the elderly understandably anxious for their benefits and the young groaning under a heavy payroll tax burden. The latter, some fear, may rebel at the prospect of the huge tax increases which will be necessary to pay the retirement benefits of the huge Baby Boom generation.[26]

This intergenerational discord is due to nothing else but Social Security's involuntary nature. No private retirement pension scheme ever has or ever could pit the generations against each other in a grim clash of interests, since private arrangements are entirely voluntary. Nobody ever heard the epithet "greedy geezer" when provision for retirement was one's own responsibility. Indeed, the better-funded a private pension fund is and the more lavish its benefits, the better off the young are, since their possible financial burden for the support of their parents is that much lighter. With Social Security, by contrast, the more the government tries to give the elderly or the better it tries to fund the program, the worse off the young are since they, not the earnings of private pension fund investments, are the sole source of financing.

The redistribution which Social Security carries out is likewise wrong. As a general rule, a person's earnings vary with his ability, enterprise, and industry, though unionization, nepotism, and other distortions might affect one's income. Social Security taxes are, ultimately, paid according to ability; the greater one's ability, the larger the amount of tax extracted. But, as we saw, benefits are paid according to "presumed need." That is, the program operates on the Marxist principle of "From each according to his ability, to each according to his need."

What of the argument that Social Security provides equity between generations? One is surely obligated to one's parents, and equity demands that one care for those who cared for one in one's childhood. But this hardly translates into perfect strangers having a moral claim on earnings forcibly extracted. And as Social Security's costs have risen, today's young generation faces a far heavier Social Security tax burden than previous ones, with ever-diminishing prospects of receiving benefits as lavish as those today's elderly enjoy. In truth, moral arguments about intergenerational equity run the other way: Social Security is inequitable to the young.

## Perverse Incentives

But beyond the obvious wrongs which its mendacity and coercion entail, Social Security is evil in more subtle but nonetheless important ways, due to the perverse incentives which it creates and their impact on our national character and conduct.

For one thing, Social Security discourages savings and self-reliance. Believing themselves covered by the "savings" forcibly taken from their income, individuals save less than they would otherwise.[27] As a corollary it encourages irresponsibility and

improvidence for the future. Social Security's huge size and longevity have made it a part of the landscape of people's thinking. For decades people have taken it for granted that much of the responsibility for their well-being in old age belongs to "society" or "the government." As President Grover Cleveland warned in 1887 when vetoing an appropriation for drought relief in Texas:

> the lesson should be constantly enforced that though the people support the Government the Government should not support the people. . . . Federal aid in such cases encourages the expectation of paternal care on the part of the Government and weakens the sturdiness of our national character.[28]

Still another sinister aspect of Social Security is its role in undermining the family. With Social Security assuming the responsibility for the elderly once borne by their children, both the ethos of reciprocal obligation between family generations and the incentive to marry and have children (to ensure care in old age) are weakened.

Finally, Social Security works insidiously against the value of life. Assuming that life is good and that a major purpose of human existence is reproduction—which, biologically speaking, it is, just as with all other living things—then it follows that other things being equal, that which encourages childbearing is good, and that which discourages it is not. As we saw, since much of the financial burden of caring for the elderly is now borne by Social Security and Medicare, the incentive to have children is thereby weakened. Moreover, as Allan Carlson of the Rockford Institute has observed, because struggling young couples are forced to participate in Social Security, they cannot improve their standard of living by reducing the support they give to the elderly. What they can do is delay or even forgo children. And in many cases they do; research across nations has found a causal connection between the size and generosity of a social security program and a country's fertility decline.[29] That is, social security has been a factor in the slow biological suicide of advanced Western societies.

Social Security can pay its current beneficiaries, and will be able to pay for some years yet. However, early in the next century, Social Security will face bankruptcy as the retiring Baby Boomer generation drives its costs above its revenues and exhausts its "trust funds" of Treasury debt. Radical reform, ideally privatization, will become urgently necessary. But should anyone attempt it, a firestorm of opposition grounded in morality will ensue. It will be one of the fiercest controversies of the future. Social Security, it will be argued, is moral, humane, compassionate, enlightened, progressive; radical reform is unthinkable, inhumane, callous, immoral. If needed reform is to be achieved, such objections must be overcome. And for that, it will be vital that the public realize just how morally flawed Social Security really is. □

1. Senator Gaylord Nelson, "Foreword," in Robert M. Ball, *Social Security Today and Tomorrow* (New York: Columbia University Press, 1978), p. vii.

2. Merton C. Bernstein and Joan Brodshaug Bernstein, *Social Security: The System That Works* (New York: Basic Books, Inc., 1988), p. 288.

3. Sum of the Old-Age Survivors and Disability Insurance actuarial deficit of $6,964 billion and the Health Insurance actuarial deficit of $16,224 billion, both under pessimistic assumptions. Figures furnished to author by the Office of the Actuary, Social Security Administration, and Health Care Financing Administration, respectively. The actuarial deficit is the excess of Social Security's projected expenditures over its projected income and trust fund assets, over the next 75 years.

4. Quoted in Wilbur J. Cohen and Milton Friedman, *Social Security: Universal or Selective?* (Washington, D.C.: American Enterprise Institute, 1972), p. 7.

5. "It's Not an Entitlement: It's Money Owed to Us," in "Letters to the Editor," *The Wall Street Journal*, March 28, 1994, A13.

6. Social Security Administration, *Social Security Handbook 1993*, p. 482, *1994 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds* [hereafter, *Annual Report OASDI*] pp. 30–32, 36, 38, 42, 48, 50, 63–64, 204–205, et al.; Robert J. Myers, *Social Security*, second edition (Homewood, Ill.: Richard D. Irwin, Inc., 1981), pp. 1, 5, 8–9, 27–30, et al.; M. C. Bernstein and Joan Brodshaug Bernstein, *Social Security: The System That Works*, pp. 16–17, 29, et al.

7. *Understanding Social Security*, p. 9.

8. *Social Security Handbook 1993*, pp. 25, 28, 192, 488.

9. *Understanding Social Security*, p. 5.

10. Peter J. Ferrara, *Social Security: The Inherent Contradiction* (San Francisco: The Cato Institute, 1980), p. 70.

11. *Ibid.*

12. A. Haeworth Robertson, *Social Security: What Every Taxpayer Should Know* (Washington, D.C.: Retirement Policy Institute, 1992), pp. 134–135.

13. *Understanding Social Security*, pp. 10–11.

14. Robertson, p. 68.

15. *Ibid.*, p. 195.

16. *Understanding Social Security*, pp. 4, 5, 6.
17. *1992 Annual Report, OASDI*, pp. 31–33; *1993 Annual Report, OASDI*, pp. 33–35; *1994 Annual Report, OASDI*, pp. 26–28.
18. *1992 Annual Report, OASDI*, p. 24.
19. *1993 Annual Report, OASDI*, p. 29.
20. *1994 Annual Report of the Board of Trustees of the Federal Hospital Insurance Trust Fund*, p. 3.
21. See footnote 3.
22. 1990 figure: Robertson, p. 116; 1994 figure, Office of the Actuary, Social Security Administration.
23. Robertson, p. 121.
24. *Understanding Social Security*, pp. 4–5.
25. Robertson, pp. 90–91.
26. See, e.g., Dorcas R. Hardy and C. Colburn Hardy, *Social Insecurity: The Crisis in America's Social Security System and How to Plan Now For Your Own Financial Survival* (New York: Villard Books, 1991), pp. 27–41.
27. Robertson, pp. 231–232.
28. *A Compilation of the Messages and Papers of the Presidents*, vol. XII (New York: Bureau of National Literature, Inc., 1897), p. 5142.
29. Allan Carlson, *Family Questions: Reflections on the American Social Crisis* (New Brunswick, N.J.: Transaction, Inc., 1988), p. 222.

THE FREEMAN
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# Employer Mandates: A Threat to Employees

by David R. Henderson

Most people who want to force employers to pay for their employees' health insurance have so far ducked the facts about who pays for "employer" mandates. They've had good reason to duck them, because the facts are clear. Economic analysis and economists across the political spectrum who have studied the issue are unanimous that the main people who pay for employer mandates are employees.

Why? Because requiring an employer to provide health insurance does not magically make the employee more productive. Say you're an employee and your annual output is worth $30,000. Competition among employers for your services forces your employer to pay you about $30,000 in salary and benefits. Now the government requires your employer to pay an extra $2,000 for your health insurance. If your boss continues to pay you $30,000 as well, he'll pay $32,000 to keep you. But this isn't worthwhile. He would be paying $2,000 more than the $30,000 worth of output that you produce. The solution, for you to keep your job, is for your employer to cut your salary and other benefits from $30,000 to $28,000. Net result: you get $2,000 in health insurance at the expense of $2,000 in salary and other benefits. *You* pay for employer-mandated health insurance.

It may look as if employees break even with the mandate. Look again. The employer wasn't providing health insurance for one reason: it wasn't worth it to the employee. The employer would have preferred to give a $2,000 health-insurance policy

*Dr. Henderson is currently the John M. Olin Visiting Professor at the Center for the Study of American Business, Washington University, in St. Louis. He is on leave from the Naval Postgraduate School in Monterey, California, where he is an associate professor of economics, and was previously senior economist for health policy with the President's Council of Economic Advisers.*

rather than salary, to avoid the 7.65 percent Social Security and Medicare taxes on pay. The fact that the employer wasn't providing the health insurance must mean that the employee did not value it as much as pay and other benefits. So the mandate unambiguously makes the employee worse off.

That the employee pays for mandates was my main message in my testimony to Senator Edward Kennedy's Senate Labor Committee in July 1994. It was also the main message of a liberal economist who supported mandates. Jonathan Gruber, an economist at MIT, was invited by Senator Kennedy's committee to defend mandates and to argue that they don't cost many jobs. The key to Gruber's argument was his evidence that mandates are mainly paid for by employees. Gruber had co-authored a study with Alan Krueger of Princeton University on the effect of increases in the cost of workers' compensation, the oldest mandated benefit in the United States. (Krueger, incidentally, will soon be the chief labor economist under Secretary of Labor Robert Reich.) Gruber and Krueger found that for every dollar increase in workers' compensation, 85 cents was paid by workers.

Kennedy and the other Democratic senators spoke throughout the hearing as if employer-provided health insurance is a free lunch for employees. Senator Paul Simon made the free-lunch assumption explicit. He posed the false alternative of a given wage without health insurance or the same wage with health insurance and asked one witness which he thought most people would prefer. Duh.

The Democratic side of the Senate staff had invited two women from Whitesburg, Kentucky—Brenda Newman and Nellie Kincer—who had gone without health insurance. Both women had found health insurance too expensive. Nellie Kincer said she would rather spend her meager income on rent and groceries than on expensive medicine. Kennedy and the other Democratic senators posed as these women's champions. Yet their own bill was designed to prevent those women, and every other worker, from making just such tradeoffs. No wonder Kennedy asked no questions of either Gruber or me.

That Gruber and I agreed was not just a fluke. Economists, whether or not they believe in mandates, do not kid themselves that employers pay for them. David M. Cutler, who defended employer mandates at the annual meetings of the American Economic Association, and who was until recently a senior economist with President Clinton's Council of Economic Advisers, recently wrote: "Most of these cost changes are likely to show up as changes in wages . . ." In its August 1994 analysis of the effects of former Senator George Mitchell's health-care bill, here is what the U.S. Congressional Budget Office said about the effect of requiring employers to pay for their employees' health insurance:

> The imposition of the mandate would raise the cost of employing workers at firms that do not currently provide insurance. Economic theory and empirical research both imply that most of this increased cost would be passed back to workers over time in the form of lower take-home wages.

Even President Clinton's Council of Economic Advisers agrees. In the annual *Economic Report of the President*, published in February 1994, the President's economists write: ". . . the dominant effect of increases in health care costs in the past has been a reduction in the real wages received by employees."

What happens if wages don't fall one dollar for every dollar of health insurance costs? Then jobs will be destroyed. Again, this is not controversial. As Jonathan Gruber stated in his testimony, "If full shifting ["shifting" is the term used to describe the fall in wages when mandates are imposed] takes place, then the total cost of the compensation to the firm will not rise, and there will be no need to lay off workers. If it does not, then compensation costs will rise, and there will be layoffs." Those who want employer mandates are stuck. On the one hand, they don't want to believe that employer mandates will kill job growth. On the

other hand, as Senator Kennedy and others learned, the only way not to believe mandates kill growth is to believe that employees pay for them.

If employees pay for mandates, why then do so many politicians advocate mandates? Alan Krueger answers this succinctly: "The costs of mandates are hidden, which makes them politically feasible."

And of course workers can't be paid less than the minimum wage. This means that many workers at or slightly above the minimum wage would risk losing their jobs. Gruber minimized this risk but here he was on shaky ground. He leaned heavily on research by Krueger and David Card of Princeton University, who surveyed fast-food employers before and after the minimum-wage change. Card and Krueger found no reduction in employment after the minimum wage increased. But their study was biased against such a finding. By surveying the same employers before and after, they did not allow for the possibility that the minimum wage increases put marginal companies out of business. Moreover, Krueger himself is skeptical at the attempt to apply his minimum wage finding to health care. Krueger writes: "This evidence [on the minimum wage] has been cited by the First Lady and others as support for the view that the health care mandate will not reduce employment. Even though I am a contributor to this literature, I am not sure it applies to a health care mandate." Krueger estimated that the Clinton mandates would destroy 200,000 to 500,000 jobs.

Many of the people who advocate employer mandates believe themselves to be truly humanitarian. It is humanitarian to spend your own money to provide health care for poor people. But there is nothing humanitarian at all about forcing poor people to spend their own money on health insurance when they have other more pressing concerns. □

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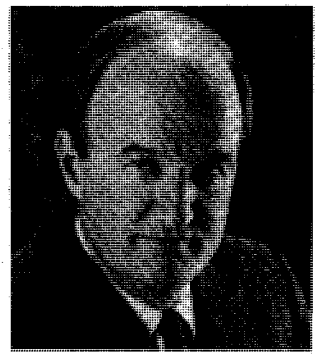

# European Unemployment: The Age of Ignorance, Part II

"This persistence of high unemployment in the European Community is a major puzzle."

—Charles R. Bean, "European Unemployment: A Survey," *Journal of Economic Literature*, June, 1994

"Is This the Age of Ignorance—Or Enlightenment?", my most controversial column, was published in the June 1994 issue of *The Freeman*. It revealed how a growing number of well-trained economists plead ignorance on the most fundamental aspects of the budget deficit, taxes, inflation, the stock market, and the business cycle. Those cited included Herbert Stein, Robert J. Barro, and Paul Krugman.

My column was not well received by the profession. None of the economists cited in my column responded, perhaps because they were too embarrassed. But Milton Friedman wrote, "Herbert Stein underestimates his knowledge; you overestimate yours." Brigham Young University professor Larry Wimmer said, "Ignorance is preferable to arrogance." So the battle of ideas continues.

Now along comes Charles R. Bean, a bright economist at the London School of Economics, writing in a recent issue of the *Journal of Economic Literature*. After engaging in 47 pages of citations, graphs, charts, cross-country regression analysis, and econometric studies, he bravely concludes that nobody really knows why unemployment is so high in Europe. None of the numerous technical models works. It's all a "major puzzle."

Obviously, if economists can't explain why a major problem such as European unemployment exists, they can't be expected to prescribe a policy to rectify the situation. Hence, the growing impotence of the economics profession. It has blunted Occam's Razor: Complexity is preferable to simplicity. Economists know so much that they now know so little.

Fortunately, not all economists subscribe to this new form of economic nihilism. Some economists see through the clouds of complexity, realizing that econometric modeling often obscures rather than elucidates the real nature of the problem. It's time to return to basic economic principles.

## The Real Cause of Unemployment

For example, Richard K. Vedder and Lowell E. Gallaway, economists at Ohio University, demonstrate quite powerfully that government policies cause widespread and persistent unemployment by raising real wages above equilibrium levels. Labor laws

*Mark Skousen is an economist at Rollins College, Winter Park, Florida 32789 and editor in chief of* Forecasts & Strategies, *an investment newsletter. He is the author of* Economics on Trial *and other books on economic and financial topics. For more information on his books and newsletter, contact Phillips Publishing Inc. at (800) 777-5005.*

significantly increase labor costs and hence discourage businesses from hiring workers. In addition, the federal government's inflationary fiscal and monetary policies create a boom-bust business cycle, causing much temporary unemployment of labor and resources. Their important study, *Out of Work*, applies their thesis to the United States during the twentieth century and concludes that unemployment is primarily due to "government activism."[1]

## Applying the Thesis to Europe

The unemployment rate has been gradually rising in Europe and now exceeds 11 percent, compared to 6 percent in the United States and 3 percent in Japan. It's the highest since the oil-shock years of the 1970s. But today there is no oil crisis. Through much of the 1980s, virtually no new jobs were created in the private sector. Fifty percent of the 16 million unemployed in Western Europe are considered long-term unemployed—without work for a year or longer. Only 11 percent of U.S. jobless are long term.

What is the cause of European joblessness? Despite the machinations of econometricians, the answer is not that difficult to discover. First, high payroll taxes—personal income tax withholding, social security, and unemployment compensation—discourage businesses from hiring. As Edmund S. Phelps, economics professor at Columbia University, declares, "Nearly every European country has brought much of its unemployment on itself—through its punishing taxation of labor. . . . Big increases in payroll and personal income taxes in most countries have been mass job-killers."[2] Last year, in an effort to close the national deficit, France raised income taxes by 10 percent. Not surprisingly, the unemployment rate in France rose by about a point and a half to 12.6 percent.

A second cause of unemployment in Europe is its labor laws and regulations, such as minimum wages, collective bargaining, and labor-management restrictions. Other mandatory benefits, including health care, pensions, unemployment and disability compensation, and paid vacations, raise labor costs.

The minimum wage in Belgium is $7 an hour, compared to $4.25 in the United States. Even now, German labor unions are pushing for a four-day workweek, amounting to an immediate 20 percent increase in real wages. In Italy, an employer must give up to six months notice before dismissal. In order to protect workers from sudden unemployment, Spain passed legislation making it virtually impossible for employers to fire workers. These are disguised methods of raising labor costs. But the actual effect is unemployment: If you can't fire workers, why hire? Spain's labor law dealing with employers' obligations to the work force is 600 pages long. It should come as no surprise that, as a result of this legislation, Spain's unemployment rate has gradually risen to depression levels, 25 percent. Portugal, on the other hand, has a less encumbered labor market and an unemployment rate of only 5.5 percent.

Third, generous welfare benefits to the unemployed, encourages the jobless to avoid work.

The existence of the European Common Market will undoubtedly force high-cost nations to liberalize their labor laws, or else face a major talent drain. Not surprisingly, many jobless Europeans are headed to other parts of the EC, or to Asia, where jobs are plentiful and labor markets are unfettered.

The answer to Europe's unemployment problem is simple. Sharply reduce payroll taxes and the rules and regulations governing labor-management relations to allow market forces to work more effectively. This means less mandated job security and fewer government benefits, but more jobs and greater productivity. It *is* a difficult choice for EC governments to make, but if they don't, unemployment can only get worse. □

1. Richard K. Vedder and Lowell E. Gallaway, *Out of Work* (New York: Holmes & Meier, 1993).
2. Edmund S. Phelps, "Summiteers: Your Taxes Kill Jobs," *The Wall Street Journal*, March 14, 1994.

# BOOKS

**Second Thoughts: Myths and Morals of U.S. Economic History**

edited by Donald N. McCloskey

Oxford University Press published for the Manhattan Institute • 1993 • 208 pages • $28.00

Reviewed by Daniel B. Klein

The two magnetic poles of social science are the bumper-sticker and *quod erat demonstrandum*—that is, the important and the precise. Anyone can make his statements precise and cohesive if he is willing to be irrelevant, and anyone can prattle about important issues if he is willing to be imprecise and incoherent. The best social science balances the pull of both poles: it struggles to span both precision in statement and importance in message.

*Second Thoughts* offers historical bumper-stickers by 28 researchers who have been through the Q.E.D.s of their field. In their research they have started with one set of bumper-stickers, explored the bases for them, and studied, studied, studied. They have trudged and maneuvered through beds of quicksand to make their facts precise and their logics cohesive. But they do not get lost in the delightful Q.E.D.s of the academic enterprise. They emerge from the experience soiled, exhausted, and uncertain, but holding in their outstretched hands new bumper-stickers, summary statements they have given rich subsidiary content to, statements that address our curiosity about how mankind's lot can be bettered. *Second Thoughts* represents a special effort to share with us the learning of these scholars, an effort too often left undone because the academic rewards for bumper-stickers are so thin.

For example, Price Fishback writes a five-page essay entitled, "Does Workers' Compensation Make for a Safer Workplace?" Fishback has written a book and numerous scholarly articles on the conditions of coal miners in America's past. From his intimacy with the facts and logics of the subject come lessons for similar issues today.

Prior to workers' compensation laws, liability for workplace accidents was based on common-law standards of negligence. Fishback summarizes the legal notion of "due care" on the part of the employer, and explains that the employer often escaped liability because the injured worker had accepted the risks involved, had himself been negligent, or was harmed by a fellow worker's negligence. These doctrines "encouraged common-sense prevention of accidents by the parties with the lowest cost of prevention"—often the workers on the scene. And jobs with high risks commanded high wages.

But between 1910 and 1930 most states passed workers' compensation laws that tended to hold employers liable for *all* serious accidents "arising out of employment." Fishback explains that, besides driving down wages and job opportunities, these laws sometimes even increased workplace hazard! In coal mining, accidents actually increased. "Since coal loaders and pick miners were paid by the ton of coal, they saw that by working a little faster and taking more risks they could get higher earnings—even though a roof fall injured or sometimes killed miners who tried to finish loading cars before setting new props for the roof."

From his detailed learning, Fishback serves up a sort of historical bumper-sticker—workers' compensation had high costs and sometimes did not achieve even its primary goal of inducing workplace safety—and shows how this pertains to current liability issues.

Here are some of the other bumper-stickers offered in the book:

- Aside from Africa the Third World is not stalled in dependency and squalor but improving rapidly.
- Imperial powers serve their vanity not their fortunes by maintaining colonies.
- Immigrants enrich a nation.

• The American economy is not falling behind any more than a father falls behind as his children gain poundage in the family.

• Economic enterprise advances technology as much as technology advances economic enterprise.

• The trade deficit itself is no ailment but perhaps a symptom of real ailments.

• Monopoly persists by grace of government privilege not market power.

• Free banking in America worked reasonably well.

• People consume a lot of resources in jockeying for position to receive government giveaways.

Not news, perhaps, but here we can see how such claims are rooted in stories involving the I.C.C., steamboats, wildcat banks, Teapot Dome, squatters, Ma Bell, *Munn v. Illinois* (1876), *Plessy v. Ferguson* (1896), UNIVAC I, the Securities Exchange Act (1934), the Cavendish Lab, hand looms, Luddites, Regulation Q, and Alan Greenspan. The essays give parsimonious accounts of particulars that stand behind the bumper-stickers. Because the editor has chosen experts—including Julian Simon, Robert Higgs, Jonathan Hughes, Peter Temin, Gary Libecap, and Nathan Rosenberg—we have confidence that the bumper-stickers emerge from deep learning. A brief bibliography invites the reader to deeper digging.

The libertarian might have a few bones to pick. Jeffrey Williamson seems to suggest that infrastructure development requires activist government, Barry Eichengreen gives a mixed review to the gold standard and says it would be impossible to re-establish today, Hugh Rockoff says that in special circumstances for short durations price controls can work, and Paul Uselding tells of the "facilitative and supportive" role that the U.S. government has played and should play in technological development. But mostly the book offers stories in line with small-government thinking.

My favorite passage comes in Elizabeth Hoffman's piece on how worker displacement and retraining belong to progress: "The challenge for the future will be to train each generation for a lifetime of change rather than for a specific skill or job. This task suggests that the kind of education that will best prepare the next generation is an education in flexibility: learning to learn new things."

Donald McCloskey has done an admirable job in bringing the layman to the academic toiler and bringing the academic toiler to humanity. □

*Dr. Klein is an Assistant Professor of Economics at the University of California, Irvine.*

## Ain't Nobody's Business If You Do: The Absurdity of Consensual Crimes in a Free Society

by Peter McWilliams

Los Angeles: Prelude Press • 1993 • 817 pages • $22.95

Reviewed by Doug Bandow

Peter McWilliams is serious about individual liberty. In the introduction to *Ain't Nobody's Business If You Do* he declares simply: "This is a book about freedom." More specifically, it is about the right of people to run their lives without the interference of government so long as they do not violate the rights of others. While this thesis might seem unexceptional to readers of the *Freeman,* McWilliams has produced a unique and enjoyable, if at times uneven, text for keeping the state out of our personal affairs.

Still, to some people the issues he writes of might seem to pale in importance compared to, say, health care, until you realize the human cost of the government's attempt to stamp out what McWilliams calls "consensual crimes." President Clinton wants to arrest you if you seek care outside of his government-controlled medical system. But the state is already daily filling the jails with people who have engaged in some act that others found to be unsafe, offensive, immoral, or something else. Writes McWilliams:

> More than 350,000 people are in jail *right now* because of something they did, something that did *not* physically harm the person or property of another. In addition, more than 1,500,000 people are on parole or probation for consensual crimes. Further, more than 4,000,000 people are arrested *each year* for doing something that hurts no one but, potentially, themselves.

Looked at from this perspective, there are few more important issues than eliminating criminal sanctions against acts which only harm consenting parties, if anyone. As McWilliams points out, tolerance, just like responsibility, "is the price of freedom." The ultimate issue is not what we would prefer our neighbors not to do, but our justification in locking them up for doing it.

McWilliams begins sensibly enough by discussing the characteristics of consensual crimes. He rightly prefers the term consensual to victimless because he does not claim that such activities never cause harm. Moreover, he deftly distinguishes consensual crimes from real crimes that perpetrators attempt to portray as victimless: nonviolent theft, for instance, as well as drunk drivers "who recklessly endanger innocent (nonconsenting) others," in McWilliams' words. He also points out the absurdity of the state attempting to protect people "from being emotionally hurt by the self-destructive behavior" of others, insisting instead on physical harm to turn an activity into a crime. In the end, he argues, the law has a pretty important job—protecting "innocent people from likely harm to their person or property." And doing that right will keep officials busy enough.

Still, consent obviously does not affect the issue of morality. And it is the traditional tenets of the Jewish and Christian faiths that have done so much to shape government policies on consensual crimes. McWilliams gives no indication of sharing these moral visions, but he recognizes their potency: "To the people who find [consensual crimes] immoral, they are and may always be immoral." Rather than arguing over what is moral, McWilliams nicely distinguishes different forms of morality.

One type, he argues, is "personal morality," what we believe to be right. This can be conceived of as intra-personal morality, since it concerns the making of a good and virtuous person. The other category is what McWilliams calls "social morality," which means "not physically harming the person or property of another." This may be best understood as inter-personal morality, governing a person's relationship with others. Thus, the key to preserving freedom is not to eschew legislating morality—the only firm basis for law is morality. What is critical is to enforce only social morality, in order to mitigate the impact of a person's sin on others. The state should not attempt to legislate personal morality, engaging in soulcraft rather than statecraft.

McWilliams, obviously a free spirit when it comes to organizing books, goes on to add sundry observations on, among other things, the Age of Enlightenment, failures of alcohol Prohibition, and hypocrisy of today's would-be prohibitionists of just about everything. Regarding the latter, he finds an obvious target: Cigarettes cause enormous carnage yet are not only legal but subsidized. Lest his sustained attack on tobacco—"cigarettes are our country's most serious drug problem," he argues—confuse one, he opposes tobacco prohibition.

There is much, much more in *Ain't Nobody's Business If You Do.* McWilliams devotes one long section to the many arguments against criminalizing consensual conduct. Indeed, at times one feels that one is getting the "kitchen sink" treatment, with no conceivable claim left out. For instance, he leads off contending that such laws are "un-American." Now, they may be stupid, dumb, immoral, and a host of other things, but there is a long prohibitionist streak in U.S. history. And if the Founding Fathers had voted on the legitimacy of, say, an anti-sodomy law, McWilliams would probably have been disappointed by the outcome.

Similar is the author's contention that the prohibition of consensual crimes is uncon-

stitutional. It would be nice if they were, but that isn't the document given us by the Constitutional Convention in 1787. Still, McWilliams' chapter on this issue is entertaining, and will certainly expand the reader's understanding of what might be possible with a judiciary more sympathetic to a Constitution that was intended to create a limited government of strictly enumerated powers.

McWilliams' other claims are generally more persuasive. He titles one chapter: "Laws against Consensual Activities Are Opposed to the Principles of Private Property, Free Enterprise, Capitalism, and the Open Market." It shouldn't be necessary to defend such a proposition, but McWilliams does so with verve. He also makes many more traditional arguments against consensual crimes: the cost of arresting, convicting, and imprisoning people for possibly hurting themselves; the catastrophic impact on those prosecuted; and the encouragement of "real," or victimful, crimes. Reading these chapters alone should be enough to convince the hardened prohibitionist that he is doing more harm than good.

Alas, the author's desire to toss in the kitchen sink really shows with his section on "Consensual Crimes and the Bible." McWilliams' biblical interpretation is more convenient than convincing, and is reminiscent of deist Thomas Paine's reliance on Christianity to bolster his arguments in *Common Sense*. Suffice it to say that the Bible establishes scores of principles governing an individual's relationship with God and his neighbors, but virtually none about when he should jail other people for failing to fulfill their duties to God. Moreover, Christianity's unique emphasis on soulcraft suggests this to be an area beyond the state's purview. Where McWilliams does have something serious to say to believers is in his argument that separation of church and state is for their benefit—after all, as he points out, we are all "part of a religious minority," and if we allow government to meddle in religion "we have not invited God, but the devil, to be the leader of the nation."

Generally more convincing are the other parts of *Ain't Nobody's Business If You Do*, covering how consensual crimes became crimes, the specifics of the most common consensual crimes, and answers to oft-asked questions (e.g., "what about the children?"). He even offers some truly clever ideas that deserve further discussion. What is the proper age of consent for kids, he wonders? Let parents and child attempt to come to a mutual agreement: with rights would then come responsibility. As McWilliams observes, "If the would-be new adults mess up, however, they do not get to hide behind their youth, inexperience, or innocence. They got the name (adult) and now they can play the game (adult court)."

What does McWilliams believe should be done about consensual crimes? Repeal the laws, of course, though he recognizes the very real political obstacles to doing so. In a short but helpful practical section, he reviews state laws regarding consensual crimes and gives some advice on how to take political action.

The most important step, however, is to simultaneously educate the public and reawaken people's commitment to liberty. *Ain't Nobody's Business If You Do* certainly should help do so. Peter McWilliams has entertainingly demonstrated that we need a second American revolution not only to reign in government spending and taxing; we also need one to stop the state from persecuting people who have harmed no one other than themselves. For helping to spread this message McWilliams deserves our thanks. □

*Doug Bandow is a Senior Fellow at the Cato Institute and former Special Assistant to President Reagan. He is also a Contributing Editor to* The Freeman *and the author of* The Politics of Envy: Statism as Theology, *recently released by Transaction Publishers.*

**The Fall of the Ivory Tower: Government Funding, Corruption, and the Bankrupting of Higher Education**

by George Roche

Regnery Publishing • 1994 • 299 pages + index • $24.00

Reviewed by Steven Yates

This book picks up where Dinesh D'Souza leaves off. Not only has political correctness reached epidemic proportions in higher education, but so have mismanagement, waste, and corruption. The cause: a long history of expanding government involvement which has created a class of dependents whose lust for easy money is matched only by their irresponsibility. Roche sees the scandal of public higher education becoming the S & L Crisis of the 1990s, and for the same reasons.

The Constitution never mentions education as a federal responsibility. Nevertheless, in 1862 Congress passed the Morrill Act which created the land grant system. A guiding theme of the Progressive era became "education for everyone at public expense." Government funding, whether through direct support for colleges and universities or student loans or support for faculty research, has grown exponentially ever since.

Roche's book highlights three consequences of government involvement in education: (1) As federal subsidies increase, decision-making shifts from economic to political terms; (2) every government dollar comes with strings attached; and (3) with protection from the marketplace, quality declines, waste and mismanagement increase, independence is discouraged, and excellence is supplanted by mediocrity.

Roche presents compelling evidence that the deplorable situation cannot go on much longer. Expenditures have gone through the roof; government assistance to students alone costs taxpayers over $22 billion a year. Defaults on student loans are at record highs; $64 billion (out of $93 billion) in student loans between 1965 and 1989 has simply disappeared. The well is now drying up. While government dollars still flow abundantly into university coffers, universities are all having to tighten their belts. Given exposés about campus radicalism, athletic scandals so numerous that new ones are barely newsworthy, academic dishonesty (including plagiarized and faked research as well as cheating by students), and graduates who are behind their counterparts in other advanced nations, the public is starting to rebel. Colleges and universities, even prestigious ones like Harvard, have lost their reputations—to the point where the name *Harvard* once evoked boos rather than cheers from a group of business and community leaders (p. 250).

Roche suggests three reforms. First, educators need to recover *leadership* values. The socialist concept of "shared governance" should be scrapped, so that university presidents can make decisions in the best interest of their institutions without being fought at every turn by faculty or forced to be glorified fund raisers. The stifling layers of bureaucracy should be disbanded. Second, educators should discover *marketplace* values. The tragedy of government funding is that it has protected higher education from the marketplace, thus nurturing mediocrity and irrelevance, not to mention ideologies resolutely hostile to intellectual and economic freedom. Universities should be accountable to students and tuition-paying parents in the way a business is accountable to customers and stockholders who can take their money elsewhere if dissatisfied. Third, higher education must return to *academic* and *moral* values. Academe once represented the pinnacle of intellectual achievement in the West. It commanded respect as the transmitter of knowledge, wisdom, and culture to the next generation. Today it is becoming a laughingstock. It is necessary to reject trendy relativism and restore the view that certain ideas have passed the test of time: truth, honesty, morality, the work ethic, economic liberty, limited government. Without reforms in all these areas, the ivory tower will continue to fall.

There are occasional gaps in Roche's discussion. For example, he says little of the tenure system which protects hundreds of unproductive professors at the expense of their more productive juniors. But this is a minor complaint in the face of what Roche has assembled here. This book, boasting a foreword by Malcolm S. Forbes, Jr., is a major contribution to public discussion of the crisis in higher education today. More comprehensive than either Allan Bloom's *The Closing of the American Mind* or Dinesh D'Souza's *Illiberal Education,* this book could have an even greater impact if enough people get to read it. It is worth observing that George Roche, President of Hillsdale College, practices what he preaches. Hillsdale accepts no federal money, direct or indirect, and offers students privately funded alternatives to government loans. □

*Professor Yates is author of* Civil Wrongs: What Went Wrong With Affirmative Action *(San Francisco: ICS Press, 1994).*

**Your Doctor Is Not In: Healthy Skepticism About National Health Care**

by Jane Orient, M.D.

New York: Crown Publishers • 1994 • 276 pages • $23.00

Reviewed by Ron Paul, M.D.

Even without Clintonian socialism, the private practice of medicine, in which the individual doctor is responsible to the individual patient, is on its last legs. Francis A. Davis, M.D., founder and publisher of *Private Practice*, recently shut down his 25-year-old magazine with the lament that the battle is lost.

But I predict that Dr. Davis, a true champion of freedom, will no more give up than I will. No matter what the prospects— and they are glum—we owe it to our country, to our patients, to our children and grandchildren to uphold the banner of liberty. At worst, we can diminish the virulence of statism now. At best, because we have moral and economic truth on our side, we may win. And whatever happens, we build the intellectual foundations of freedom for the future, and our descendants will bless us for it.

But a resistance needs a central plan (if *Freeman* readers will excuse the expression!). A number of valuable books have been published in recent years to defend private medical care, but none measures up to *Your Doctor Is Not In.* Now, perhaps before it is too late, we have a brilliant and principled champion who can also organize and write: Dr. Jane Orient.

Dr. Orient, a physician who saw the socialized beast at first hand in the Veterans Administration, has revitalized the American Association of Physicians and Surgeons as executive director. AAPS is the only free-market doctors' organization, and I proudly belong to it rather than to the corrupt and statist AMA. But as with FEE in the pre-Sennholz years, a great organization had somewhat slowed down.

Also as with Dr. Sennholz and FEE, Dr. Orient's leadership has brought AAPS roaring back. Her newsletters are famous for their intelligence and strategic thinking. Her lawsuit opened up Hillary's secret comintern meetings. Perhaps most important of all, Dr. Orient has now given us the handbook of freedom that our movement needed. It may already be giving nightmares to Ira Magaziner and the other leftists who wrote ClintonCare. And don't they deserve it.

Arguing from first principles, Dr. Orient shows that the free market enforces such virtues as honesty, hard work, and conscientiousness, whereas state intervention does just the opposite, as anyone who has ever dealt with the government knows.

There is no right to medical care, she shows, any more than there is a right to housing, food, or clothing, and the attempt by government to create such a right leads to totalitarianism—the road we are traveling today. For to say that someone—the poor, the elderly, the "uninsured," etc.—has the right to the life, liberty, and property *of someone else* is a moral outrage, and a grant of absolute power to the state.

And the state corrupts whatever it touches. When I was trained, I gladly took the Hippocratic Oath, solemnly pledging, in a tradition thousands of years old, never to commit abortion or euthanasia. Now young doctors, in the words of such oaths as that of Dr. Louis Weinstein, "remember that it is wrong to terminate life in certain circumstances, permissible in others, and an act of supreme love in others."

Dr. Kevorkian could be an Angel of Love only under statism, for when the state is spending its hard-stolen money, it resents any patient who lives "too long." In the Netherlands, the socialized system murders more than 20,000 patients a year—"involuntary euthanasia" it is called.

Socialized medicine was an invention of Bismarck, the warfare stater who also gave us social security. Lenin and Hitler institutionalized the system, and most of the world followed. As Dr. Orient shows in riveting detail, however, even the "best" of these systems, as in Canada or Germany, is a disaster for the patient and the taxpayer.

Medical statism got its start in America thanks to the AMA and its anti-competitive medical licensure laws, an intervention courageously condemned by Dr. Orient. She also shows that modern health insurance is a non-market institution. Invented by the AMA-sponsored Blue Cross and Blue Shield, health coverage violates the principle of insurance. With the exception of catastrophic insurance, health insurance is pre-paid consumption of an incredibly inefficient and bureaucratic sort.

Lyndon Johnson's Medicare and Medicaid, Richard Nixon's Health Care Financing Administration, Ronald Reagan's CLIA—not to speak of the Indian Health Service and the VA—have given us a system that is more than half statized. And our Fabian socialist First Couple want to finish the job, and us in the process.

In response, the Republicans, from Bob Dole to Phil Gramm, provide their own versions of socialized medicine. They don't call it that, of course, but once admit the principle of universal access—that the taxpayer should provide equal health insurance for every American—and there is no stopping the leviathan.

Equality is the most politically pernicious idea on earth. Claim that human beings, who are manifestly unequal, should be treated the same, and you have opened the way not only to systemic injustice, but to the omnipotent state. God created each of us as a unique individual, and we should celebrate this. We could not even have an economy or the division of labor, Ludwig von Mises pointed out, were not a "radical inequality" the chief feature of the human race.

As Dr. Orient shows, we don't need any sort of national system of health care, any more than we do of dry cleaning. We need the free market. If we are concerned about the deserving poor, and we should be—although secondarily to the producers—a free market is best for them too.

But most important, in this clarion call to roll back the state, Dr. Orient shows us that liberty favors the paying patient. The IRS agent is bad enough. Equip him with a scalpel, as Bill and Hillary would, and we'll soon find the government not only lifting our wallet, but submitting us to Dr. Weinstein's "supreme act of love." □

*Dr. Paul, a practicing physician and former Congressman, is chairman of the National Endowment for Liberty in Lake Jackson, Texas.*

**The History of Freedom**

by Lord Acton, with an Introduction by James C. Holland

Acton Institute, The Waters Building, 161 Ottawa NW, Grand Rapids, Mich. • 1993 • 93 pages • $5.95

Reviewed by Salim Rashid

"Power tends to corrupt and absolute power corrupts absolutely." This one sentence, from a letter to Bishop Mandell Creighton, not from some public document, has served to immortalize Lord Acton's thought for posterity. And yet, like most short summaries, it hides so much of central

importance to Lord Acton that it is almost misleading. What led Acton to such a conclusion, so totally at variance with Plato's notion of a philosopher-king? The two lectures on *The History of Freedom* provide us a partial insight into Acton's inner thoughts. It is entirely appropriate that this book be published by the Acton Institute, a nonprofit organization set up to promote Classical Liberal ideas among clergy and other interested individuals, a goal close to Acton's heart.

The text consists of two short essays of equal length: "Freedom in Antiquity" and "Freedom in Christianity." The absence of dates and names gives each part a timeless air, making the essays readable, particularly by young students who have little background to appreciate the drama Acton writes about. I have used the essays for a short course on "Christianity and Capitalist Civilization" and was pleasantly surprised that students found many stimulating passages. One student was struck by the illiberal statement attributed to Aristotle that the mark of the worst governments is that "they leave men free to live as they please" (p. 40). Another was struck by the political transformation said to have overcome Christianity around AD 500: "Christianity which in earlier times had addressed itself to the masses, and relied on the principle of liberty, now made its appeal to the rulers, and threw its mighty influence into the scale of authority" (p. 60).

The brevity and style of these essays pique one's curiosity. There are many passages that cry out for further detailed examination. Of Athenian democracy Acton wrote: "Their history furnishes the classic example of the peril of Democracy under conditions singularly favorable. For the Athenians were not only brave and patriotic and capable of generous sacrifice, but they were the most religious of the Greeks" (p. 32). No references, no guides, no further evidence supports such a sweeping claim. But if one knows about Acton, here is a clear guide to Acton's own beliefs. The religiosity of the Athenians was the foundation of their liberty, Acton believes. But how can he persuade those who wish for more than just his authority?

The connecting thread between antiquity and Christianity is the statement of natural law by the Stoics. By appealing to an authority superior to the state, by urging the prior constraint of natural law upon all civil law, the Stoics broke with the political tradition of the Greeks. Acton is struck by the fact that Antiquity had provided the noblest precepts yet these truths did not save them from ruin.

"Freedom in Christianity" begins by crediting the Teutonic and Germanic tribes with the final ingredient—participatory institutions—that *finally* led to the growth of political liberty. No details are provided and in subsequent pages the tribes are forgotten. Instead, what emerges is the importance of the ecclesiastical hierarchy in the period between AD 500 and 1500. It was from the conflict between church and state in this period that political liberty eventually took root. Acton is careful to point out that both institutions sought absolute control and it is striking to note how leading spokesmen of both the Guelphs and the Ghilbellines spoke almost the same language in deriving power from the welfare of the people. "Looking back over 1,000 years . . . this is what we find—Representative government, which was unknown to the ancients, was almost universal" (p. 67). A conclusion that shocks the modern ear! Most of Acton's remaining space is devoted to the demise of such political liberty under the influence of Machiavelli and the subsequent return to more "moral" politics with the writings of Grotius. Acton has kind words for the United States and believes it provides the best example of a country that has been able to combine liberty with progress.

What are the weak points of Acton's presentation? There is very little about the importance of the Crusades, the Italian Mercantile Renaissance, the Age of Discovery, or the Industrial Revolution. Acton cautions his readers at the outset that he is concerned with ideas, not institutions, and chronicles instances when despotic acts were undertaken by liberal institutions. It

allows him to continue with little emphasis on the social and economic conditions which permit and encourage a free society. This is all the more surprising since Acton notes among the enemies of liberty "the perpetual struggle for existence" which actually leaves men "eager to sell their birthright for a pottage" (p. 21). If hungry men are so eager to surrender their liberty, is not economic subsistence a precondition for sustaining a free society?

With all his eagerness to establish religion as a fundamental prerequisite for liberty, Acton fails to note that Christianity is concerned with saving souls. Liberty is neither necessary nor sufficient to achieve this goal. He never quite considers the point that, under certain conditions, God's work is furthered by accepting social evils such as slavery. Like most modern Christians who have discussed the rise of the West, Acton feels constrained to minimize the energy, intellectual force, and societal support provided by Christianity through the ages. Modern scholarship (e.g., Francis Oakley, *The Medieval Experience*) has provided us so many more reasons for appreciating the nurturing of Western civilization provided by Christianity. These lectures thus provide an eloquent minimalist argument for the Providential view of the growth of freedom. Acton's essays are certainly worth reading but one must constantly keep in mind how unselfconsciously he is the product of the Victorian age. □

*Dr. Rashid is Professor of Economics at the University of Illinois.*


# CRIMINAL JUSTICE? THE LEGAL SYSTEM VERSUS INDIVIDUAL RESPONSIBILITY

Edited by
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